Supreme Court, U.S.
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No. 04-

IN THE
Supreme Court of the United States

KUMAR AMARANENI, Administrator of the estate of Amaraneni Venkataramiah and G.J. LAKSHMI,

Petitioners,

v.

GULF COAST RESEARCH LABORATORY, HAROLD D. HOWSE and DAVID COOK,

Respondents.

On Petition for a Writ of Certiorari to The Supreme Court of Mississippi

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

(1) Has the State of Mississippi violated the Petitioners Due Process Rights and Equal Protection Guarantees of the 14th Amendment to the Constitution?

PARTIES

The parties to this proceeding are set forth in the caption.

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Petitioners Kumar Amaraneni, Administrator of the Estate of Amaraneni Venkataramiah and G.J. Lakshmi, respectfully pray that this Court grant a Writ of Certiorari to review the Judgment and Opinion entered May 13, 2004, and its predecessor judgments and orders and the denial of the Motion for Rehearing, of the Supreme Court of Mississippi entered on August 5, 2004.

OPINIONS BELOW

The May 13, 2004, opinion of the Supreme Court of Mississippi, which is reported at 877 So.2d 1250 (Miss. 2004), is set out at pp.1a–7a of the Appendix to this petition. The September 12, 2001, Finding of Fact and Conclusion of Law, which is not officially reported, is set out at pp. 8a–31a of the Appendix. The October 8, 1998, Opinion of the Supreme Court of Mississippi, which is reported a 722 So.2d 530 (Miss.1998), is set out at pp. 32a–71a of the Appendix. The July 3, 1990, Order, Supplemental Orders, and Judgment on January 16, 2001, of the chancery court of Jackson, County Mississippi, which are not officially reported, are set out at pp. 72a–95a of the Appendix.

JURISDICTION

The May 13, 2004, judgment by the Supreme Court of Mississippi is sought for review. Rehearing on the judgment was denied by the Supreme Court of Mississippi on August 5, 2004. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

STATUTES AND REGULATIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1 (2004).

42 U.S.C. § 1983 (2004), states in pertinent part,

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

STATEMENT OF THE CASE

Petitioners Dr. G.J. Lakshmi (Lakshmi) and Dr. Amaraneni Venkataramiah (Ramiah) (also referred to as Venkataramiah) [1] filed suit in the Chancery Court of Jackson County, Mississippi on May 18, 1987, asserting claims under 42 U.S.C. §1983 against the Respondents, Gulf Coast

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[1] It must be noted that Ramiah's appeal and petition for writ of certiorari are asserted by Kumar Amaraneni, the administrator of Ramiah's estate.

Research Laboratory (GCRL)[2], Harold D. Howse (Howse) and David Cook (Cook), for racial discrimination based on race or national origin.[3] GCRL is now a part of the University of Southern Mississippi, an entity of the State of Mississippi and at all times was a Mississippi Institution of Higher Learning.

Both Petitioners held a Ph.D in their scientific field and were employed as shrimp biologists engaged in ongoing shrimp aquaculture at the GCRL. Venkataramiah was President-elect of the World Mariculture Society when both scientists were unlawfully terminated from GCRL as a result of discrimination based upon race or national origin in 1986.

A federally mandated affirmative action plan, required under Title VI, 42 U.S.C. § 2000-d, et seq., was in effect at the Gulf Coast Research Laboratory prior to, during, and after the events which caused this suit transpired. Because of Mississippi's history of *de jure* racial discrimination, affirmative action is not voluntary, but is in fact required by the federal government for all parties receiving federal monies or grants. Defendants, acting in concert with the Board of Trustees of Institutions of Higher Learning of the State of Mississippi and Mississippi Attorney General Edwin Lloyd Pittman, unlawfully caused the Affirmative Action Plan to be "suspended" by proclamation of the said Board. Armed with this apparent but clearly illegal authority to disregard the law, the individual Defendants, Howse and Cook, acting under color of their authority as Director, Assistant Director, and Affirmative Action Officer of the GCRL, established criteria

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[2] As an arm of the State, The Board of Trustees of State Institutions of Higher Learning (IHL) had authority over the GCRL pursuant to Miss. Code Ann. §37-101-21(1996).

[3] Ramiah and Lakshmi are natives of India and as Asian Indians are members of a minority group under federal statute. (Pet.App. 77a)

to target parties to be terminated, established and defined an appeals committee, and proceeded to fire thirty-four employees, including Ramiah and Lakshmi who lost their life's work on June 30, 1986.

The Reduction in Workforce inflicted a grossly disparate impact upon minority employees. At the time of the Reduction in Workforce, GCRL had a total of 130 employees, only nine of whom were minorities as defined by law. Eight out of the nine of them were terminated. As a result of the reduction, the percentage of racial minorities employed by GCRL dropped to .01% of the total workforce, with 88.8% of all minority workers having been terminated. Thereafter, only one was rehired - as a "runner." The total number of nine minority employees out of a staff of one hundred and thirty included Ramiah and Lakshmi, who had been the only two minority scientists on the staff.

When asked during the trial why minorities were not employed in his department, the head of the Microscopy Section replied, "Genetics, I guess." The Physical Plant Section Head testified that the black janitors at GCRL were fired during the Reduction in Workforce because he could not find one who could run a floor buffer. The janitors were entirely replaced with white employees after the Reduction in Workforce.

In implementing a reduction in workforce deliberately designed to have the greatest adverse impact on Ramiah and Lakshmi and "suspending" affirmative action (the purpose of which could only serve to allow the Defendants to purge the staff of its minority employees), Defendants violated clearly established rights of the Plaintiffs.

Two trial judges have so agreed.

The original trial in this matter consisted of twenty-six (26) days of testimony and evidence having been presented in the Chancery Court of Jackson County, Mississippi, with Judge Kenneth Robertson presiding. Judge Kenneth Robertson heard the original testimony, observed the demeanor of over thirty (30) witnesses, and considered their testimony along with two hundred and eleven (211) exhibits introduced during the trial. He found for the Petitioners. A final judgment was entered on January 16, 1991,[4] in favor of the Plaintiffs with awards of $210,000 to Ramiah and $180,000 to Lakshmi and attorney's fees in the amount of $71,000.

The Defendants, represented by the Office of the Attorney General of the State of Mississippi throughout this litigation,[5] filed their Notice of Appeal and Designation of the Record on February 14, 1991. Then they sat back and did absolutely nothing for over two (2) years. Nothing was done to preserve or prepare the Record. The Defendant's next action came only in response to Plaintiffs' Motion to Docket and Dismiss Appeal, filed on or about February 17, 1993. Even then they waited almost two months after the filing of the Motion to Docket and Dismiss Appeal to respond.

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[4] The Chancellor filed the Opinion of the Court on July 3, 1990 (Pet.App. 72a) and after the parties requested additional findings of fact and conclusions of law, the Chancellor issued Supplemental Opinions on October 11, 1990 (Pet.App.77a), October 15, 1990 (Pet.App.82a), October 16,1990 (Pet.App.86a), October 18, 1990 (Pet.App.89a), and October 19,1990 (Pet.App.92a).

[5] Even though the State was dismissed as a party in *Amaraneni I, Gulf Coast Research Lab. v. Amaraneni*, 722 So.2d 530, 531 (1998), the State, by and through the Attorney General's office, continues to defend the individual Respondents and has argued and prevailed in the trial court on Petitioners' motion to have Respondents represented by their own counsel in an attempt to bar the State from representing Respondents in their individual capacities.

By the time Defendants got around to trying to procure a record, much of it had disappeared. In his dissenting opinion in *Amaraneni I*, Mississippi Supreme Court Justice Chuck McRae summarized the situation well:

> The record now before this Court is replete with more than two thousand omissions by the court reporter, which was not the fault of the appellees. The court reporter further stated that the record would have been 5,000 pages but she only transcribed 1,988 pages, leaving more than 3,000 pages not transcribed. The testimony of several key witnesses for the plaintiff, including one who has since had a stroke and is now unable to testify, was not transcribed where the tapes were inaudible. A court reporter assisting in the transcription process stated in her affidavit that some of the recordings were so bad that they had to "rough in" what had been said. Even the chancellor's notes were used as testimony in the case; the majority, nevertheless, finds that his findings were "not corroborated by the record."
>
> Every effort was made to have the record in this case corrected; it was not. Sixteen exhibits remain missing. Numerous motions to compel and for sanctions were filed to no avail. The court reporter since has retired, leaving a record still laden with omissions.
>
> It is the appellant who is responsible for presenting to this Court a record of trial proceedings sufficient to support his assignments of error. *Winters v. State*, 473

> So.2d 452, 457 (Miss.1985). The majority should not penalize the appellees in this case due to the appellants' errors and then turn around and reward the appellants for supplying a record with more than 3,000 pages and multiple exhibits missing. *See Williams v. State*, 178 Miss. 694, 172 So. 746 (1937) (denying writ of certiorari requesting enlargement of record on appeal where movant failed to properly include exhibits within record in court below). That said, we should rely not on the record, but on the chancellor's findings.

Amaraneni I, 722 So.2d at 541, ¶¶67-69 (McRae, dissenting).

Still, the Mississippi Supreme Court declined to dismiss the appeal, and ten years after the completion of the trial, on October 8, 1998, in *Amaraneni I* [6] (Pet. App.32a), the Supreme Court of Mississippi reversed and remanded the case to the trial court for more specific findings and conclusions of law. By this time the Plaintiff Ramiah had died, the chief Defendant, Howse, had died, and Plaintiff's lead off witness, Dr. Gordon Gunter, had suffered a major stroke. In the interim up to the present day, Dr. Gunter passed away, as did Dr. Charles Eleuterius, who testified to the role racial prejudice played in the culture at GCRL.

In *Amaraneni I*, The Mississippi Supreme Court found that the Petitioners presented a viable claim against the Respondents under § 1983 but that the trial judge[7] applied an erroneous standard under federal law in finding

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[6] *Gulf Coast Research Laboratory v. Amaraneni*, 722 So.2d 530 (Miss.1998).

[7] Judge Kenneth B. Robertson

discriminatory intent on the part of the individual defendants and misapplied the law concerning damages. (Pet. App.32a). The Court reversed and remanded for further proceedings, giving the trial judge great latitude in how to conduct further proceedings, directing the trial judge as follows: "This Court recognizes that the chancellor who originally tried this case no longer sits on the bench. Thus, if the new chancellor is satisfied that he cannot make the required findings, he or she may elect to grant a new trial. Miss. R. Civ. P. 63(b)." *Amaraneni I,* 722 So. 2d 530, n.1.

Eventually following remand, Chancellor Jaye Bradley was assigned to this matter as Judge Robertson had not won re-election, and it is apparent from her September 12, 2001 (Pet.App.8a), Judgment that she meticulously went through the record, faithfully following the Mississippi Supreme Court's mandate. In a documented and detailed opinion, strictly following the Mississippi Supreme Court's mandate, she determined that even with an incomplete record there remained substantial evidence to affirm Judge Robertson's original Judgment, which she did. (Pet.App.8a).

The Respondents appealed the September 12, 2001, judgment by Chancellor Bradley and on May 13, 2004, in *Amaraneni II*, the Supreme Court of Mississippi for a second time reversed the trial court, holding that the findings of fact were not supported by substantial evidence and remanded for a new trial, going so far as to chastise Judge Bradley for doing exactly what *Amaraneni I* had charged her to do. *Gulf Coast Research Laboratory v. Amaraneni*, 877 So.2d 1250 (Miss.2004) reh.denied. (August 5, 2004) (Pet.App.1a).

Plaintiffs cannot retry this case. Prejudice to Plaintiffs' ability to recreate their case is obvious just from the lapse of more than eighteen (18) years since the Reduction in Force. The parties will be compelled to use the

same transcript that the Mississippi Supreme Court has already held to be deficient. Unlike the immortal GCRL and the State, Plaintiffs are mortal flesh and blood. Two parties and two key witnesses are now dead. In addition to those obstacles, the State has lost sixteen trial exhibits.

It is fundamentally unfair, discriminatory, violative of due process and pointless—unless the point is to destroy the Plaintiffs case—to now remand for a new trial 15 years after Plaintiffs successfully presented their case during twenty-six days of trial in 1989 and won. Plaintiffs have prevailed in the lower court not once, but twice, only to have their victory thrown out because the appellate record is "insufficient", something for which the State of Mississippi is clearly responsible, both as a party in this litigation and by and through its court reporter. *Barber v. Barber*, 608 So.2d 1338 (Miss. 1992).

Having entirely failed in their duty to bring a complete record before this Court, the Defendants have thus far successfully exploited the outcome of their dereliction.

Petitioners now petition for a writ of certiorari following a second remand from the Supreme Court of Mississippi, nearly a decade after the original chancellor's judgment finding the Respondents in violation of 42 U.S.C. § 1983.

REASON FOR GRANTING THE WRIT

Plaintiffs have been denied due process by the State of Mississippi.

Constitutional adjudication inherently involves persuading a judicial forum to counter the will of the majority as expressed through its representatives. Burt

Neuborne, *The Myth of Parity*, 90 Harv. L. Rev. 1105, 1127 (1977). To the extent that the forum is itself subject to the political pressures, which shaped the judgment it is asked to review, its capacity to provide sustained enforcement of countermajoritarian constitutional norms will be diminished. *Id.* The actions of the Supreme Court of Mississippi in this case are intolerable and constitute an abuse of the judicial process insofar as the justices were subject to the political pressures among the Court's own members.

A. *The State of Mississippi, knowingly or not, has orchestrated the demise of Plaintiffs' Case*

At every twist and turn, this case has been controlled by the State of Mississippi. The Gulf Coast Research Lab was an arm of the State of Mississippi and discriminated against the Plaintiffs, members of a protected class. The Court Reporter, upon whom the blame has been cast for the appalling state of the appellate record, was an employee of the State of Mississippi. The Defendants, in two appeals to the Mississippi Supreme Court, have been for all practical purposes the State of Mississippi, since they are represented in their individual capacities, over protest, by the Office of the Attorney General of the State of Mississippi, who initially engineered Ramiah's and Lakshmi's firing by approving the unlawful suspension of federally mandated Affirmative Action. The Attorney General of the State of Mississippi who facilitated the firing of the Plaintiffs by advising an unlawful suspension of the Affirmative Action Plan at Gulf Coast Research Laboratory was Edwin Lloyd Pittman, who was to become a Justice and later Chief Justice of the Mississippi Supreme Court, and who functioned as such throughout much of the appellate history of this case, although he recused himself from *Amaraneni*.

The State was in control from start to finish. It is impossible not to note that the State's treatment of the Plaintiffs in this action, culminating in the actions of its judiciary, have replicated the judicial environment existing in the South following the Civil War for which § 1983, et seq., was enacted by the Congress to redress. This case demonstrates that we have now come full circle.

"Due process guarantees neutrality on the part of those sitting in a judicial or semi-judicial capacity." *Freeman v. Public Employees' Retirement System of Mississippi*, 822 So.2d 274, 281 (Miss. 2002) (quoting *Dean v. PERS*, 797 So.2d 830, 836 (Miss. 2000) (citing *Schweiker v. McClure*, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982))); *see also Marshall v. Jerrico, Inc.*, 446 U.S. 238, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980).

> 'Whether acting through its judiciary or through its Legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.' *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S.Ct. 624 (1951) (Frankfurther, concurring) (*quoting Brinkerhoff- Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682, 50 S.Ct. 451, 454, 74 L.Ed. 1107.

B. *Stare Decisis: Mississippi precedent holds that the chancellor's decision in this case must be affirmed*

This was not the first time that the Mississippi Supreme Court had been faced with the dilemma of what to do when Chancellor Kenneth Robertson's court reporter

failed to provide a record for review. **In the 1992 case of *Barber v. Barber*, 608 So.2d 1338 (Miss. 1992), decided at the same time *Amaraneni* was pending before the Mississippi Supreme Court, the Mississippi Supreme Court was faced with an identical procedural situation, involving the same trial judge and the same court reporter.** The appellant in that case filed his notice of appeal on January 18, 1990. The Supreme Court noted in the *Barber* decision as follows:

> Apparently, the stenographic notes and tapes were lost in this case. The court reporter has failed to acknowledge receipt of designation of the record, *See* Miss.S.Ct.R.11(c), or otherwise respond to repeated correspondence from this Court. The record does not reflect any efforts on the part of Daniel to secure a transcript or to ascertain a reason for the failure of the court reporter to respond.
>
> Daniel filed a Statement of the Evidence in accordance with Rule 10, Miss.Sup.Ct.R., on August 22, 1991. When an aggrieved party wishes to file an appeal to this Court, and the trial record or transcript is unavailable, the rule provides that a statement of the evidence be filed. The rule contains a sixty-day filing requirement. Miss.S.Ct.R.10. In other words, Daniel had sixty days after he filed his appeal to this Court in which to file the statement of the evidence. Daniel failed to comply with this requirement by filing his statement, some one year, seven months, and four days after his notice of appeal to this Court.

Barber v. Barber, 608 So.2d 1338 (Miss. 1992). **The**

Mississippi Supreme Court affirmed the trial court's decision, holding "without a record upon which to assess Daniel's claimed error, we are compelled to affirm." *Id.* at 1340 (citing *Fountain v. Pickle*, 254 So.2d 769 (Miss. 1971). As in Venkataramiah, the same court reporter failed to get together the record and file it with the Supreme Court. As in *Barber*, Defendants herein filed their Notice of Appeal and Designation of the Record on February 14, 1991, and then did absolutely nothing for over two (2) years to ensure that the Record was being prepared. Their wake up call action was only in response to Plaintiffs' Motion to Docket and Dismiss Appeal filed on or about February 17, 1993, and even then they waited almost two months after the filing of the Motion to Docket and Dismiss Appeal to do anything. In the present case, Defendants never filed a Statement of Evidence, and certainly did not do so within sixty days of filing their Notice of Appeal as required by Rule 10. Except for the fact that in the current case, the State and prominent state officials are liable, the present case is indistinguishable from *Barber*. Like *Barber*, *Amaraneni* should have been affirmed upon the first appeal. To hold otherwise is to violate Plaintiffs' right to due process and equal protection, thus placing them in the untenable position of being unable to further pursue their cause of action against the Defendants. There are no distinguishable facts or circumstances, except for the State's involvement and liability in *Amaraneni* and the involvement of mere citizens in *Barber*.

To ignore the clear precedent of the law of the State of Mississippi and remand for a new trial, a logistical impossibility, is to deprive Plaintiffs of equal protection and due process under the Mississippi and United States Constitutions. *U.S. Const. Amend* 14; *MS Const. Art.* 3 § 14; *MS Const. Art.* 3 § 24. Plaintiffs cannot retry this case due to the death of crucial witnesses, the loss of exhibits by the State, the deficient record, and the passage of more than

eighteen (18) years. Plaintiffs have prevailed in the lower court not once, but twice, only to have their victory thrown out because the State's record is "insufficient", a circumstance for which the Defendant must bear responsibility, as it was never the Plaintiffs' duty but the Defendants' to provide the record to the Supreme Court. *Barber v. Barber*, 608 So.2d 1338 (Miss. 1992).

In *Pennington v. Dillard Supply, Inc.*, 858 So.2d 902 (Miss. 2003), the Mississippi Court of Appeals, in affirming the lower court due to the insufficiency of the record presented to it for review, correctly noted:

> ¶5. "It is a well settled rule that this Court will only consider facts found within the trial record. This Court does not rely on assertions made in briefs, but only on facts preserved within a record certified by law." *McClee v. Simmons*, 834 So.2d 61, 64-65 (2012) (Miss.Ct.App. 2002). It is an appellant's duty to justify his arguments of error with a proper record or the trial court will be considered correct. *Am. Fire Prot., Inc. v. Lewis*, 653 So.2d 1387, 1390 (Miss. 1995). The record on appeal must show such portions of the record as are necessary for a consideration of the questions presented. 4 *C.J.S. Appeal and Error* §440 (1993). **The absence of an adequate record may result in affirmance or dismissal.** *Id.* Therefore, before we can address the merits of an appeal, we must have a complete record of the evidence presented, the rulings made, and the basis for the trial court's decision.

Pennington, 858 So.2d at 903 (emphasis added).

It is the appellants' burden of seeing that the record contains all data essential for an understanding of matters presented to the court. *Shelton v. Kindred*, 279 So.2d 642 (Miss. 1973). It is the appellants' duty to justify their assignments of error with a proper record, and if he does not, it is presumed the trial court was correct in it ruling. *Dillon v. State*, 641 So.2d 1223, 1225-26 (Miss. 1994).

It would take several pages to cite every Mississippi case that stands for that very proposition. These principals are so ingrained in Mississippi jurisprudence and are among the cornerstones of appellate practice. Only now, in this single case when the State itself is vulnerable, have the rules changed.

Because the Petitioners are not being afforded a real opportunity to adjudicate their Section 1983 claim in the Mississippi Supreme Court, they now come to this Court petitioning for a Writ of Certiorari. At this point, Petitioners have no other options as they have yet again been denied due process by the State of Mississippi.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Supreme Court of Mississippi and affirm the trial court, assessing attorneys' fees and costs as provided by law.

Respectfully submitted,

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APPENDIX

APPENDIX A

Supreme Court of Mississippi.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,

Defendants-Appellants,

v.

Kumar AMARANENI, Administrator of the Estate of Amaraneni Venkataramiah and G.J. LAKSHMI,

Plaintiffs-Appellees,

Nos. 2002-CA-00970-SCT, 91-CA-00172-SCT

Decided: May 13, 2004

Vacated and remanded for new trial.
Easley and Graves, JJ., dissented.
EN BANC.
SMITH, Chief Justice, for the Court.

¶ 1. This employment termination case brought under 42 U.S.C. § 1983 arises from a judgment entered in the Chancery Court of Jackson County in favor of Dr. Amaraneni Venkatramiah and Dr. G.J. Lakshmi. The chancery court found that Dr. Harold D. Howse and Dr. David Cook of the Gulf Coast Research Laboratory (GCRL) violated the plaintiffs' rights in firing them and awarded a judgment in the amount of $210,000 to Venkatramiah and $180,000 to Lakshmi. Additionally, attorney's fees were awarded in the amount of $71,000.

¶ 2. Because this case has been ongoing for over a decade, a brief summary is needed for the sake of continuity between former appeals and current appeals. This case was originally filed on May 18, 1987, in the Chancery Court of Jackson

County by Venkatramiah and Lakshmi asserting claims under 42 U.S.C. § 1983. Plaintiffs alleged that they had been unlawfully discharged from their employment at GCRL without due process and because of their race and origin. A final judgment was entered on January 16, 1991, in favor of ***1252** the plaintiffs' with awards of $210,000 to Venkatramiah and $180,000 to Lakshmi and attorney's fees in the amount of $71,000.

¶ 3. The defendants appealed from this judgment, and in *Gulf Coast Research Lab. v. Amaraneni*, 722 So.2d 530 (Miss.1998) (*"Amaraneni I"*), this Court reversed and remanded the case to the trial court for more specific findings and conclusions of law on a number of issues. This included findings of whether the defendants intentionally discriminated against the plaintiffs, whether the declared financial exigency was genuine, and whether the plaintiffs had valid contracts for permanent employment. The Court also instructed the chancellor to clarify the issues of damages and attorney's fees.

¶ 4. On remand the original chancellor was no longer on the bench, and the successor chancellor recused himself, requiring assignment of the case to yet a second successor chancellor, Chancellor Bradley. Chancellor Bradley issued findings of fact and conclusions of law, as well as a judgment on October 10, 2001, reaffirming the original 1991 judgment in favor of the plaintiffs.

¶ 5. We conclude that the record is completely insufficient to support the findings of the chancellor. We, therefore, vacate and remand for a new hearing on the merits.

FACTS

¶ 6. The facts of this case are adequately set out by this

Court in *Amaraneni I.*

DISCUSSION

I. Subject Matter Jurisdiction.

¶ 7. We have examined this issue very carefully, find it to be without merit and therefore unnecessary of discussion.

II. Sufficiency of the Record.

[1][2] ¶ 8. We apply a well-settled, but limited, standard of review when considering a chancellor's decisions. *Frierson v. Delta Outdoor, Inc.*, 794 So.2d 220, 222 (Miss.2001). Under this limited standard, we "will not disturb the factual findings of a chancellor when supported by substantial evidence unless the Court can say with reasonable certainty that the chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard." *Gannett River States Publ'g Corp. v. City of Jackson*, 866 So.2d 462, 465 (Miss.2004). That is, "if the chancellor's findings are unsupported by substantial credible evidence, ***we must reverse***." *Frierson*, 794 So.2d at 222 (emphasis added) (citing *Hammett v. Woods*, 602 So.2d 825, 827 (Miss.1992)).

[3] ¶ 9. GCRL argues that the successor trial judge should have ordered a new trial instead of making specific findings of fact from the record. It claims that since the successor judge did not have the opportunity to hear the witnesses live and observe their demeanor, the successor chancellor's findings do not have the reliability required for review by an appellate court. GCRL further asserts that the successor chancellor could not have found substantial evidence in the record to support her findings of facts and conclusions of law.

¶ 10. The lack of a sufficient record to support the chancellor's findings of fact and conclusions of law was clearly recognized and addressed by this Court in *Amaraneni I*. It was noted that there were "more than two thousand omissions by the court reporter," and "the court reporter further stated that the record would have been 5,000 pages but she only transcribed 1,988 pages, leaving more than 3,000 pages not transcribed." *Amaraneni I*, 722 So.2d at 545 (McRae, J. dissenting). ***1253** Also noteworthy is the following statement: "Every effort was made to have the record in this case corrected; it was not. Sixteen exhibits remain missing. Numerous motions to compel and for sanctions were filed to no avail. The court reporter since has retired, leaving a record still laden with omissions." *Id.* In fact, this record was so astoundingly insufficient that this Court agreed only to reverse and remand, but could not agree upon a disposition thereafter. The Court stated: "Because we cannot agree on any instructions to guide the lower court, we remand the case to be decided on such principles as the trial judge may deem right." *Id.* at 530.

¶ 11. On appeal anew, nothing has changed to alter this issue. In fact, it is now aggravated. Further complicating the matter is the fact that Chancellor Robertson who tried the case was no longer on the bench when we remanded the case. The case was thus assigned to Chancellor Watts. A hearing on this issue was conducted by Chancellor Watts on February 24, 1999, and again on June 21, 1999. The parties were given more than ample time to review the existing record. Chancellor Watts, on March 21, 2000, signed an agreed order directing the parties to "submit Proposed Findings of Fact and Conclusions of Law to the court by June 8, 2000, after which the parties are directed to confer with the Court Administrator to **set this matter for trial.**" Thus, it appears from this order that the parties and chancellor anticipated trial of the case at some point in the

future. The record is replete with numerous requests by the parties for extensions of time in 3 month intervals within which to complete a thorough and adequate review of the record. The record reflects that both sides acknowledged that the existing record is wholly inadequate. It appears that the parties thoroughly exhausted all efforts to secure a complete record from the court reporter for both the chancellor and this Court to consider, all to no avail. It is equally obvious that the problem was solely the fault of the court reporter rather than the trial judge or the parties.

¶ 12. After apparently ruling on the issue of retrial herein, Chancellor Watts was invited by plaintiffs' counsel to recuse. Counsel claimed that the case was extremely complicated and would require a tremendous amount of time which he suggested that Chancellor Watts did not have to give to this particular case. Counsel filed before this Court on December 14, 1998, a Petition To Appoint A Special Master Or Alternatively A Special Judge, suggesting that the original trial judge, Chancellor Robertson, or alternatively, former Chancellor Robert Oswald be appointed to try the case. However, by order of Chief Justice Lenore Prather on December 30, 1998, this Court declined to make that appointment. Subsequently, by order on January 21, 2001, Chancellor Watts did in fact recuse.

¶ 13. Review of the record reflects that the very next item that appears is Chancellor Jaye Bradley's findings of fact and conclusions of law, dated September 12, 2001. Judgment was entered on October 9, 2001. Chancellor Bradley did not conduct a hearing on this issue of retrial or decision based upon use of the existing record. Chancellor Bradley did not conduct a new trial, but merely examined the existing record and made a decision therefrom without a finding on the record, in a separate order or otherwise that the existing record was sufficient. Chancellor Bradley should not have

decided this case on the existing record without conducting a hearing on the issue. Alternatively, she could have found that she could proceed on the existing record, given that Chancellor Watts's prior orders of March 22, 2000, and June 9, 2000, clearly contemplated and ***1254** so stated that a new trial would be held in this case.

[4][5] ¶ 14. Our general rule is the chancery court as trier of fact has the primary authority and responsibility to assess the credibility of witnesses. *Dunn v. Dunn*, 786 So.2d 1045, 1049 (Miss.2001). The trial judge "who hears the witnesses live [and] observes their demeanor ... is by his very position far better equipped to make findings of fact which will have the reliability" required for review by an appellate court. *Amiker v. Drugs for Less, Inc.*, 796 So.2d 942, 947 (Miss.2000). As a result, a successor judge, even one with access to a printed record of the case, "sits in an inferior position to the judge who presided over the trial of the case." *Id.* As it exists now, the record here does not support the chancellor's decision regarding findings of fact and resulting conclusions of law. Without an adequate record a successor judge to one who actually tried the case is severely handicapped. Such is an impossible situation. Here, in fact, the current chancellor is actually the third successor judge to consider this record and attempt to make findings of fact and conclusions of law. Thus, the undertaking of the third successor chancellor in deciding this case and now this Court in review is both insurmountable and impossible. What is totally lacking due to an unchanged and incomplete record is any substantial evidence to support certain findings of fact and conclusions of law by Chancellor Bradley. This is especially so in view of the fact that this Court on several issues addressed in *Amaraneni I* clearly stated that the existing record did not support the previous opinion of the chancellor. The bottom line unfortunately is that this record has been and still is woefully and completely inadequate.

Without substantial evidence in the record to support the findings of facts on these issues, they cannot stand. *Browder v. Williams*, 765 So.2d 1281, 1284 (Miss.2000).

¶ 15. A majority of this Court previously acknowledged that the record was woefully inadequate to support the findings of fact and conclusions of law. Based upon our review of the record now, nothing has changed. The record remains unchanged and is still inadequate to support the chancellor's decision. Regrettably, we must vacate and remand with instructions for a new trial as the existing record will never be sufficient to allow for a decision. Because we vacate and remand for a new trial, we need not consider the remaining assignments of error.

CONCLUSION

¶ 16. For the foregoing reasons, the trial court's judgment is vacated, and this case is remanded to the Chancery Court of Jackson County for a new trial.

¶ 17. **VACATED AND REMANDED.**

WALLER AND COBB, P.JJ., CARLSON AND DICKINSON, JJ., CONCUR. EASLEY AND GRAVES, JJ., DISSENT WITHOUT SEPARATE WRITTEN OPINION. DIAZ AND RANDOLPH, JJ., NOT PARTICIPATING.

877 So.2d 1250

APPENDIX B

In the Chancery Court of Jackson County, Mississippi

Kumar AMARANENI, Administrator of the Estate of Amaraneni Venkataramiah and G.J. LAKSHMI,

Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,

Defendants,

Cause No. 50,839

Decided: September 12, 2001

This matter was tried in Jackson County Chancery Court almost a decade ago. The presiding Chancellor was the Honorable Kenneth Robertson. After a lengthy trial, verdicts and monetary damages were awarded to each Plaintiff. The Defendants subsequently appealed.

On appeal, the Supreme Court examined a record that was not complete; however the issues were narrowed. Surviving appeal was a claim against Defendants, Dr, Harold Howse (Howse) and Dr. David Cook (Cook), in their individual capacities, for violation of each Plaintiffs rights under 42 U.S.C. Section 1983, violation of their substantive due process rights, and breach of contract. The trial Court was further instructed to address damages. The Gulf Cost Research Laboratory (hereinafter GCRL) was dismissed from the suit along with Defendants, Howse and Cook, in their official capacities.

Judge Robertson, who originally tried this matter, no longer sits on the bench. The Supreme Court remanded, with instructions to the new Chancellor to decide if he could make the required findings or elect to retry the case on its merits.

The Chancellor replacing Judge Robertson recused himself and the case was reassigned to this Court. This Court has jurisdiction over the parties and subject mater herein.

The specific issues left for adjudication by the trial court are:

(1) Specific findings and conclusions on the issue of whether the Defendants, Howse and Cock, intentionally discriminated against Plaintiffs, Ramiah and Lakshmi, in violation of 42 U.S.C. Section 1983.

(2) Whether other employees rehired, after the termination of the Plaintiffs, were hired to replace them.

(3) Whether a financial emergency existed and did the Defendants articulate a legitimate, non-discriminatory reason for the termination of the Plaintiffs.

(4) Was there a breach of employment contract as alleged by the Plaintiffs, for which there is no sovereign immunity.

(5) Did the Defendants act in violation of the Plaintiffs substantive due process rights by terminating their employment.

(6) Did the Plaintiffs fulfill their duty to mitigate damages.

(7) Did the individual Defendants enjoy qualified immunity for state and federal claims.

(8) Is an award of attorney's fees appropriate in this case?

FINDINGS OF FACT

Dr. Venkataramiah and Dr. Lakshmi, the Plaintiffs, are racial minorities and in a protected class pursuant to Section 1983. Plaintiffs were the only minority members on the scientific staff at GCRL. It is important to note that one of

the Plaintiffs. Dr. Venkataramiah, and one of the Defendants, Dr. Howse, have died since the trial was held in this matter. Also, Dr. Gordon Gunter, a witness that provided important testimony substantiating the contractual claims of the Plaintiffs has died. There is no dispute that GCRL is an institution of higher learning and falls under the governing powers of the Board of Trustees of the State Institutions of Higher Learning (IHL). The IHL has the power and authority to contract with teaching staff for a term not exceeding four years. The IHL has a set of by-laws which provides:

> "It shall be the policy of the Board to elect all officials for a definite tenure of service and to re-elect, during the period of satisfactory service"
> And
> "There shall be an appropriate tenure committee in each institution."

The evidence clearly shows there has never been a tenure committee for GCRL. Dr. Edsel E. Thrash, Director of IHL, during Defendant's Howse's service as director of GCRL, testified that in his opinion GCRL staff members were not faculty, therefore, tenure would not apply to them. Further, he opined that GCRL conferred no degrees and this further supported his decision not to consider tenure status for GCRL's employees. However, it is clear from the record, that the by-laws themselves do not distinguish between GCRL and other traditional universities with regard to tenure committees.

In August of 1969, Dr. Gordon Gunter, then director of GCRL hired the Plaintiff, Dr. Venkataramiah. In 1970, Dr. Gunter hired the Plaintiff, Dr. Lakshmi. The evidence in the trial record shows that both Plaintiffs worked in a non-hostile environment under Dr. Gunter but the work

environment under Dr. Howse became hostile.

It is evident from the record that there was no written contract of employment between GCRL and either of the Plaintiffs. However, Dr. Gunter's testimony shows his intent that employment of both Plaintiffs be permanent. The Plaintiffs also believed their employment to be permanent. Further, it is evident from the record that both Plaintiffs secured grants and as a result of their research and hard work ethic caused significant benefits to GCRL.

Both Plaintiffs were full time GCRL employees entitled to all of the benefit programs. Dr. Gunter testified that when he hired the Plaintiffs, "I gave them oral assurance of how long they could remain. I only employed the ones who I intended to keep permanently" (T. VOL 1, P. 55). This Court finds that the Plaintiffs established that they had permanent contracts of employment with GCRL. The Defendants do not contest this classification since existence of an employment contract was admitted in their filed Answer.

The Plaintiff, Dr. Venkataramiah was head of the Physiology Section of the GCRL and had valid research contracts through June 30, 1986. The Plaintiff, Dr. Lakshmi was employed as a physiologist at GCRL. Dr. Lakshmi had valid research contracts from 1970 through June 30, 1986.

Both Plaintiffs published research on a regular basis during their employment at GCRL. Dr. Gunter testified that Dr. Venkataramiah and Dr. Lakshmi's work ethic was good and their research brought favorable recognition to GCRL, both nationally and worldwide.

The Defendant, Dr. Howse, was appointed interim director of GCRL on November 18, 1971. In February of

1972, IHL named Dr. Howse as Director of the GCRL. Also in 1972, the IHL appointed the Defendant, Dr. David Wilson Cook as assistant Director for Administration and Academic Affairs for GCRL. Dr. Cook also served as Division head of the Physiology Department, Affirmative Action Officer and Registrar. Dr. Cook testified that he did not specifically recall reading the affirmative action plan that was in place until after termination of both Plaintiffs. It is apparent from the record that Dr. Cook was not aware of the obligations pursuant to the affirmative action plan. Dr. Cock was appointed to serve as the affirmative action officer by Dr. Howse in the late 1970's. He had held this position at least six (8) years prior to the termination of the Plaintiffs. In reviewing the testimony of Dr. Cook, it was apparent to this Court he was unaware of the ratio of minority employees terminated. In fact Dr. Cook was not aware of the number of minorities employed at GCRL Despite GCRL executing an Affirmative Action Plan on December 17, 1979, racial balance in the workforce at GCRL declined during Dr. Cooks' tenure as Affirmative Action Officer. This evidence is uncontradicted in the trial record before this Court.

On April 17, 1981, the Plaintiff, Dr. Venkataramiah suffered a heart attack. This unforeseen event occurred during the final phase of the Physiology Sections' three year project on Ocean Thermal Energy. The Plaintiff, Dr. Venkataramiah, underwent heart bypass surgery in July of 1981. He was temporarily totally disabled. On April 10, 1982, Dr. Venkataramiah suffered a second heart attack. In 1984, Dr Venkataramiah obtained a grant from Mississippi Power Company, worked part time and within two years of his heart attack was able to return to work full time.

The Defendant, Dr. Cook, testified that the Plaintiffs, Dr. Venkataramiah and Dr. Lakshmi were the only shrimp biologists employed at CCRL, and they were

engaged in ongoing shrimp aquaculture. The Defendant, Dr. Howse, had previously attempted to transfer Dr. Walker into the shrimp aquaculture project but upon Dr. Venkataramiah's refusal the transfer did not occur. When the Plaintiff, Dr. Venkataramiah later appealed his termination of employment, Dr. Howse appointed Dr. Walker to sit on the peer review panel, which heard the appeal.

As further evidence of the Defendants hostile attitudes, the Plaintiff presents testimony that in early 1984, the Defendant, Dr. Howse, appointed Dr. Mcllwain to investigate the possibility of beginning a shrimp project with the Oceanic Institute. Although Dr. Mcllwain was the assistant director of fisheries, Dr. Howse, admitted that there was no one at GCRL as qualified in this area as was the Plaintiffs, Dr. Venkataramiah and Dr. Lakshmi. Dr. Mcllwain in turn appointed Dr. Overstreet as "principal investigator' and John Ogle was in charge of "the maturation of the project" along with the hatchery. Although nothing was funded initially it eventually funded for $500,000,00.

In the fail of 1986, the IHL was aware of an approximate $70,000,000.00 reduction in state funds for universities.

As evidenced by the testimony of Dr Robin Overstreet, Dr. Howse, as well as others, were well aware of the financial cuts, but refused to take any action to retain the staff at GCRL. In anticipation of the reduction in funds, the Defendant, Dr. Howse, requested that the IHL declare a financial exigency and approve a reduction in work force plan for GCRL.

The IHL in considering a reduction in workforce, sought legal advice from attorneys who had assisted the University of Oklahoma in a similar situation. The

affirmative action plan was suspended at GCRL; however, there was no evidence presented as to how this was done or who made the decision to suspend it.

Dr. Howse requested that IHL declare a financial exigency for GCRL and IHL passed a resolution approving it. The by-laws for IHL set forth a procedure for declaring a "financial exigency" and testimony shows this procedure was not properly followed.

The validity of the "financial exigency" is questioned by this fact finder. The trial testimony shows that at the expiration of the financial exigency, CCRL had doubled cash reserves with a total cash on hand of $673,000.00 including Certificates of Deposit in excess of $350,000.00. Exhibits #45 and #50, as well as testimony from Dr. Cleere, Chris Fulton (business engineer for GCRL), and Lucy Martin (Assistant Commissioner for Board of Trustees, IHL) shows for the fiscal year ending June 30, 1986, unrestricted general fund balances of $338,392.00 to $403,000.00 and accounts receivable of $259,945.00. During the fiscal year for which the financial exigency was declared, $880,000.00 was spent on the facilities at the lab. At the termination of the "financial exigency", the GCRL had a balance of $717,348.00 to $723,623.00 and unrestricted funds actually increased. At the end of the fiscal year (June 30, 1987), during which the financial exigency was declared, GCRL had a balance of $648,505.00 in unrestricted general funds; and accounts receivable of $267,610.64.

Dr. Cook testified that in 1987, GCRL received $500,000 in grant money for the shrimp project. However, the Plaintiffs were not rehired, nor offered employment under the same conditions as their original employment.

Dr. Cook further testified that two electron

microscopes, with a purchase price exceeding $100,000.00, were purchased during the "financial exigency". Chris Fulton testified that the amount of money used to make this purchase exceeded the salaries for the entire Physiology Department. He further testified that in retrospect GCRL could have met payroll for the fiscal year during which the financial exigency was declared, without closure of the Physiology Section. Chris Fulton also testified that subsequent to the closure of the Physiology Department. GCRL purchased real property at Bell Fountaine Beach, in Jackson County, Mississippi.

Based on the review of evidence presented, this Court further finds that less qualified individuals were hired to replace the Plaintiffs. The testimony shows that Harriet Perry occupied the physical space where the physiology section has been housed. Christine Trigg, a former research assistant to the Plaintiffs, was rehired to assist Harriet Perry and Dr. Mcllwain. Harriet Perry testified that she requested Trigg from a list of candidates. Harriet Perry did not hold a Ph.D. and her salary, at the time of trial was $40,000.00. The work done on the shrimp project was a logical progression of work started by the Plaintiffs in the physiology section prior to it being closed. The testimony of Dr. Gunter established physiology to be essential to the research being conducted at GCRL. Interestingly, the employees hired to conduct physiology research were all of the Caucasian race.

Based on the evidence and testimony presented at trial, this Court is of the opinion that the declaration of "financial exigency" was premature and the anticipated financial crisis never occurred. It should have been apparent to the Defendants that there was no financial crisis. They should have re-hired the Plaintiffs in the same positions and under the same contingencies under which they were originally hired, and they should not have suspended the

affirmative action plan.

After the "financial exigent" status was approved, a plan for the reduction in workforce at GCRL was submitted which suspended the affirmative action in place at GCRL. The plan was designed for GCRL by Dr. Howse and Dr. Cook. Both Defendants developed the criteria evaluation terms used in the implementation of the workforce reduction plan and they also chose the staff evaluation period of five years. The Defendants relied on this plan in terminating employment of the Plaintiffs and dissolving the physiology section of GCRL.

This was a period of time during which the Plaintiffs work/research production was at its lowest due to the heart attack and temporary disability of Dr. Venkataramiah. Under Dr. Cook's own criteria, his personal record was also substandard. It is clear from the statistics that other sections, not dissolved or terminated, generated less funding than the physiology section. Despite this information, Dr. Cook recommended to Dr. Howse that the physiology section be closed. Under the workforce reduction Plan, no consideration was given to seniority of employees. The Plaintiffs had the most seniority of those employees terminated. It is clear from the record that these steps were taken due to the alleged financial exigency. Neither of the Plaintiffs were terminated due to misconduct or malfeasance. There was no dispute at trial that both Plaintiffs were highly qualified and capable of performing their work at GCRL.

On May 16, 1986, the Plaintiffs received letters from the Defendant, Dr. Howse terminating their employment based on the recommendations from Dr. Cook after he had considered the applicable criteria (which he designed). The last day of employment for both Plaintiffs was June 30, 1986.

Both Plaintiffs continued their work at GCRL, without pay, until November 1986. During this time both Plaintiffs continued to seek grants. After termination of employment, both Plaintiffs withdrew their retirement funds for living expenses. Both lost their health insurance as a result of their unemployment. The Plaintiff, Dr. Venkataramiah has since died of a heart attack. There is evidence that the Defendant, Dr. Howse, offered re-employment approximately six months after the firings. However, it was not under the same permanent status as when the Plaintiffs were originally hired by Dr. Gunter seventeen years earlier.

Christine Trigg was one of the employees terminated pursuant to the work reduction Plan, She prepared documents that were admitted into evidence, which demonstrated the racial disparity in GCRL terminations. (See Exhibits 191, 192, 193, and 194.) The aftermath of the reduction in force left only one minority employee at Gulf Coast Research Labs; however, this Court is aware that the disparate impact does not, in and of itself, amount to a showing of intentional discrimination. Subsequent to the termination, seventeen former employees were rehired; but none were minorities. The person replacing both Plaintiffs, eventually resigned. Still GCRL refused to rehire the Plaintiffs under the same conditions of employment as they were originally employed.

The reduction in force Plan, suspended the affirmative action plan at GCRL, it violated the rights of the Plaintiffs to have twelve months notice of termination by reducing the notification period from twelve months to thirty days pursuant to the financial exigency, the reduction plan ignored an employee's years of service; and finally the five year evaluation window did not give consideration to the

health circumstances of Dr. Venkataramiah, which also effected his ability to produce research and grant applications.

As a result of the evaluations conducted pursuant to the workforce reduction Plan, Dr. Cook determined the Physiology Section expendable and closed it. In his testimony, Dr. Cook justified his decision by stating that the Physiology Section was "peripheral" and therefore not essential to the work at GCRL. However, Dr. Gunter provided trial testimony to the contrary, stating that Physiology is not peripheral and that personnel at the lab "cannot study biology without including physiology".

At the time Dr. Gunter went before the peer committee and stated that he disagreed with the determination that physiology was "peripheral" to the work at the lab. In this regard, this Court gives greater weight to the testimony of Dr. Gunter due to his educational background and experience in the overall operation of GCRL. Dr. Howse's testimony on this "peripheral" classification seems contradictory at best. His testimony essentially said that physiology was not the "central focus" of the research but, "that doesn't mean that it is not vital. That doesn't mean that it is not desirable."

As pointed our by the Supreme Court in their remand opinion, there is no designation among any of the general research sections as "peripheral" or "non-peripheral" in the "Personnel Policies and Procedures of Gulf Cost Research Laboratory Handbook for Employees" See 722 So.2d 530 at 539 ¶35. The evidence presented at trial demonstrates that the Physiology Section at Gulf Coast Research Laboratory, under the direction of the Plaintiffs, Dr. Venkataramiah and Dr. Lakshmi, had earned the professional respect of several worldwide research

organizations, due to their studies in ecological research. Therefore, this Court is of the opinion that the physiology section was not "peripheral" to the central focus of research at GCRL, but was in fact essential to the ongoing research being funded by various grants and therefore should not have been closed.

CONCLUSIONS OF LAW

INTENTIONAL DISCRIMINATJON

It is undisputed that the Plaintiffs were members of a class protected by Title VII of the Civil Rights Act of 1964 and 42 U.S.C., Section 1983. The applicable standard to be applied in this type case (violation of 42 U.S.C. Section 1983) is set forth by the Mississippi Supreme Court in their remand opinion:

> In McDonnell Douglas, the Court established three distinct procedural stages for proving discriminatory employment practices. First, the complainant must carry the initial burden of establishing a prima facie case of racial discrimination. Appellees argue that under this standard 'Ramiah and Lakshmi had the burden of establishing by a preponderance of the evidence that they are members of a racial minority, that they were qualified for a particular position, and that similarly or less qualified persons were selected in their place." See *McDonnell Douglas*, 411 U.S at 802 93 S.Ct. 1817; *Lee v. Conecuh County Bd. of Educ.*, 634 F.2d 959 (5thCir. 1981). After a prima fade case is made, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the

> employee's rejection. *Id.* at 962. Until recently, the third prong of the McDonnell Douglas test required the plaintiff to prove by a preponderance of the evidence that the employers professed nondiscriminatory reason was merely a pretext for discrimination. *McDonnell Douglas*, 411 U.S. at 807, 93 S.Ct.1817.

This standard was somewhat altered in the recent case of *St Mar/s Honor Center v. Hicks*, 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993), Under *Hicks*, the first two steps of the *McDonnell Douglas* test remains essentially the same. *Hicks*, 509 U.S. at 506-10, 118 S.Ct. 2742. The plaintiff must prove a prima facie case and the employer then has the burden to produce a non-discriminatory reason for the discharge. *Id.* Should the employer meet this burden, the Plaintiff is then required to prove by a preponderance of the evidence "that the defendant intentionally discriminated against [him] because of his race" or gender. *Id.* at 511, 113 S.Ct. 2742 (citation omitted).

While "[t]he fact finders disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case suffice to show intentional discrimination," *Id.*, simply disproving the defendant's non-discriminatory explanation, in and of itself, is no longer sufficient to establish a claim of unlawful discrimination. Rather, the plaintiff must prove that the Defendant was impermissibly motivated by the plaintiff's race in taking its adverse personnel actions. *Id.* At 517-18, 113 S.Ct. 2742. Thus, under *Hicks* the chancellor's rejection of the defendants asserted reasons for their actions does not entitle Ramiah and Lakshmi to judgment as a matter of law on the grounds of racial discrimination. As the State correctly

argues, they must prove discriminatory intent.

It is the opinion of the Court that the Plaintiffs established a prima fade case of discrimination:

1. Each of the Plaintiffs was a member of a protected class. It is undisputed that both Plaintiffs are Asian-Indians, a racial minority protected by law.

2. The Plaintiffs were obviously qualified for the positions they held. The qualifications of each Plaintiff were never in question. Both Plaintiffs hold PhD's in the scientific fields and both have conducted research and had articles published in professional publications. There was never a dispute at trial as to the qualifications and professional reputation of the Plaintiffs.

3. The Plaintiffs have established an adverse employment action. It is undisputed their employment was terminated on June 30, 1986. This court has found the Plaintiffs were replaced by similarly or less qualified people to perform the same tasks.

Once the Plaintiffs established a prima facie case, the burden shifts to the Defendants to show a legitimate non-discriminatory reason for the termination of employment. McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 s.Ct. 1817, 36 L.Ed2d 668 (1978), Leev. Conecuh Company Board of Education, 634 F.2d 969 (5thCir. 1981): St. Mary's Honor Center v. Hicks, 509 U.S. 502, 1135 S.Ct. 2742, 125 L.Ed 2d 407 (1993). The Defendants offer the "financial exigency" and the "Reduction in Workforce Plan" as their legitimate non-discriminatory reasons for termination of Plaintiffs employment.

The Mississippi Supreme Court remanded this case

for determination as to whether the Defendants, Dr. Howse and Dr. Cock, articulated a legitimate and facially nondiscriminatory reason for terminating the Plaintiffs employment. "This hinges on a specific factual finding of whether the financial exigency was genuine" 722 So.2d at 537, Paragraph 27. Based on the previous findings of fact this Court determines the declaration of financial exigency to be false and premature. Further, the Court determines the reduction in workforce plan to be discriminatory to the Plaintiffs, considering the five year evaluation window, Dr. Venkataramiah's health, the seniority of both Plaintiffs, and suspension of the affirmative action plan.

The Plaintiffs presented substantial evidence at trial that the anticipated financial exigency never occurred. The mere fact that IHL declared a state of financial exigency does not validate its existence. In Reeves v. Sanderson Plumbing Products, Inc. 530 US. 133, 120 S.Ct. 2097, 147 L.Ed. 2d 105 (2000), the United States Supreme Court held that where the Plaintiff has established a prima facia case of discrimination and where the fact finder concludes the employer's proffered explanation is false the Plaintiff may survive Judgment as a matter of law.

The proffered explanation of the Defendant, which this Court finds to be false, lends credence to other evidence presented at trial which establishes that the Plaintiffs were victims of intentional discrimination. See also, Texas Department of Community Affairs v. Burdine, 450 U.S. 248 at 256 (1981).

This Court, after considering the evidence presented at trial, finds the "financial exigency" was non-existent and the "workforce reduction Plan" to be unfair and biased against the Plaintiffs, considering their circumstances at the time. Three witnesses testified that the criteria used to judge

the production of the various sections at Gulf Coast Research Labs were unfair. 722 So2d at 537, ¶80. Thus, it is not unreasonable for this fact finder to infer the ultimate fact of discrimination from the falsity of the Defendants' explanation. See Reeves, *supra*. To hold otherwise would require a confession of intentional discrimination on the part of an accused employer.

Once the employer's proffered explanation is discredited it is permissible for the Court to assume his decision was based on "impermissible consideration." See Furnco Construction Corp. V. Watters, 438 U.S. 567, 577 (1978),

> "When all legitimate reasons for rejecting an applicant have been eliminated as possible reasons for the employer's actions, it is more likely than not the employer, who we generally assume acts with some reason, based his decision on an impermissible consideration"

Suspension of the affirmative action plan at Gulf Coast Research Labs causes concern to this Court and corroborates to the Plaintiffs allegations of intentional discrimination. This Court questions the Defendant's provision of suspending the affirmative action plan in their proposed workforce reduction plan. Whatever the purpose, it served only to allow termination of minorities at GCRL.

The prior chancellor, who presided over the trial of this matter found "no reasonable pattern can be found in the evaluations and recommendations made by Dr. Cook to Dr. Howse". Based on the findings of fact recited previously, this Chancellor agrees. This Court is not convinced of the genuineness of the reasons articulated by the Defendants. Further, this Court is of the opinion that the reasons offered

by the Defendants were not credible, but used as a pretext for discrimination. The "financial exigency" was non-existent and the criteria for implementation of the "workforce reduction plan' served only to discriminate against them.

Assuming arguendo that the Defendant's proffered reasons were legitimate, nondiscriminatory reasons for termination of the Plaintiffs employment, this Court further finds that such reasons were a mere pretext for intentional discrimination. The anticipated financial exigency was used as a means to get the workforce reduction plan approved by the IHL. There was obviously no financial exigency in a fiscal year wherein revenues increased, expensive scientific equipment (two electron microscopes) in excess of $100,000.00 was purchased, and beachfront property was purchased for GCRL.

This Court has previously found the employment evaluations used in the workforce reduction plan to be discriminatory against the Plaintiffs. The suspension of the affirmative action plan allowed the discriminatory process to be applied to minority employees which resulted in the termination of minority employees, regardless of their seniority or circumstances. The only minority employee spared, worked in the maintenance department at GCRL.

The final step under Hicks, requires the Plaintiffs to show by a preponderance of the evidence that the Defendants intentionally discriminated against them due to their race. In contemplating this element this Court, in addition to its previous finding of discrimination, considered the alarming fact that after the reduction in workforce, the only remaining minority employee was in the maintenance department, performing janitorial services.

SUBSTANTIVE DUE PROCESS CLAIMS

As stated previously in this opinion, the Plaintiffs were hired on a permanent basis, pursuant to an oral employment contract. The testimony of Dr. Gunter established permanency and the state admits an oral contract of employment. Therefore, this Court finds the Plaintiffs had more than a mere subjective expectation of permanent employment. Wicks v. Mississippi Valley State University. 536 So.2d 20 at 23 (Miss. 1988). This Court finds the Plaintiffs had a property interest in their employment. Further, it is undisputed that GCRL failed to establish a tenure committee pursuant to the by-laws of IHL. This in effect, prevented the Plaintiffs from obtaining the status of tenured employment.

In order to prevail on a substantive due process claim, the Plaintiffs must establish a property interest and it must be shown that the governmental action is not rationally related to a legitimate governmental purpose. Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 98 S.Ct. 2207, 57 L.Ed 2d 91(1978); Everhart v. Jefferson Parish Hospital, 757 F2d 1567 (5th Cir.1985). As pointed out by our Supreme Court in the remand opinion, "In the context of educational and other state institutions, the test has been used interchangeably with the 'arbitrary and capricious' standard" 722 So.2d 730 at 743 citing Kelly v. Johnson, 425 U.S. 238, 96 S.Ct. 1440, 471 L.Ed.2d 708 (1976): Honore v. Douglas, 833 F.2d 565 (5th Cir.1987). This Court, after full review of the record, finds that a genuine financial exigency did not exist, and the evaluation criteria developed by Dr. Cook and complemented by Dr. Howse was not a fair or rational decision making process used in selecting which employees were to be terminated and therefore served no legitimate governmental purpose.

Therefore, based on these findings this Court determines the firings of Dr. Venkataramiah and Dr.

Lakshmi to be arbitrary and capricious and therefore violates the Plaintiffs substantive due process rights.

BREACH OF CONTRACT

The Chancellor who presided over the trial of this matter found that Dr. Gunter "actively solicited the employment of Dr. Venkataramiah and Dr. Lakshmi at Gulf Coast Research Laboratory and maintained permanent employees consistent with the policy of the administration as Director of GCRL..." Quoted at 722 So.2d 530 at 540 (Miss. 1996). After a review of the record, this Court is in agreement. Previously, in this opinion, this Court found that the Plaintiffs presented sufficient evidence to establish a permanent contract of employment with GCRL. On appeal, the Supreme Court pointed out "even assuming that a contract of employment existed, Gulf Coast Research Laboratory may have argued a defense under the Statute of Frauds." quoted at 722 Sold 530 at 540 (Miss. 1996).

The Statute of Frauds requires the terms of a contract to be in writing in order to be enforceable. 722 So.2d 530 at 540 citing Section 15-3-1(d) MCA Bowers Window and Door Co. V. Dearman, 549 So.2d 1309, 1313 (Miss. 1989); The duration of employment is an essential part of an employment contract and should be in writing. 722 So.2d 530 at 540 (citing Short v. Columbus Rubber and Gasket Co., 585 So.2d 61, 64 (Miss. 1988).

It is undisputed, from the record, that no written employment contract existed. In the Answer filed by the Defendants, there is no Statute of Frauds defense asserted, in fact, the Defendants, in their Answer (Paragraph 68) admit both Plaintiffs had "valid year-to-year contracts of employment, either oral or written, during the period of 1969 through June 30, 1986" (termination date).

The Supreme Court, in its remand opinion stated "in the present case, no written contract of employment existed. Thus, the dispositive issue may be whether the doctrine of equitable estoppel applies as an exception to the Statute of Frauds." Where the Statute of Frauds is not raised, and the Defendant concedes the existence of an oral employment contract, the fact finder need not determine whether the doctrine of equitable estoppel applies. The Statute of Frauds defense was not evident from the trial record, and with the existence of the oral employment contract being admitted by the Defendants, this Court finds that a contract for employment did in fact exist between the Plaintiffs and GCRL. This contract of employment was breached by the wrongful termination of the Plaintiffs.

QUALIFIED IMMUNITY

FEDERAL LAW CLAIMS

The Supreme Court, in its remand opinion, found the Defendants, Howse and Cook, were performing discretionary duties when they implemented the reduction in force plan:

> "As head of GCRL, Howse decided whether to request the declaration of financial exigency. And while GCRL was required to get approval from IHL for actions taken under the reduction force plan, it was Howse and Cook who designed the criteria for implementing the plan. Their actions here were not pursuant to specific orders, or spelled out in minute detail beforehand. See *Id.* Thus, some degree of deliberation or judgment characterized the actions of the

> defendants and as such these actions are discretionary." 722 So.2d at 534

Qualified immunity is only applicable where the Defendant's conduct is objectively reasonable. Even where the conduct violates a constitutional right, qualified immunity shields the officials conduct if it was objectively reasonable. Hare v. City of Corinth, MS., 135 F3d 320 (5th Cir.1998); Sallas V. Carpenter, 980 F.2d 299(5th Cir. 1992). The "reasonableness' is assessed in light of the legal rules clearly established at the time of the incident. Johnson v. City of Houston, 14 F.3d at 1059 (C.A. 5, 1994); Sallas v. Carpenter, 980 F2d 299 (5th Cir.1992). The Court must view the evidence in the light most favorable to the non movant. Anderson v. Creighton. 483 U.S. 635, 639, 107 S.Ct. 3034, 3038, 97 L.Ed 2d 523 (1987) citing Pfannstiel v. Cite of Marron, 918 F.2d 1178, 1183 (5th Cir.1990).

In their remand opinion the Supreme Court put it simply, "officials performing discretionary functions are shielded from civil damages liability 'as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated'." 722 So.2d at 534 quoting Anderson v. Crieghton, 483 U.S. 635 at 638, 107 S.Ct.3034.

Public officials will not be shielded from liability where they knowingly violate the law. Malley v. Briggs, 475 U.S. 335, 106 S.Ct. 1092 896 L.Ed 271 (1986). Based on the evidence presented at trial, this Court has previously determined that the Defendants, Howse and Cook, intentionally discriminated against the Plaintiffs based on their race. Thus, it is the opinion of this Court that such conduct does not constitute objectively reasonable grounds on which to terminate the employment of both Plaintiffs.

STATE LAW CLAIMS

Government officials in the State of Mississippi are clothed with defenses not available to ordinary citizens so that when such an official is named as a Defendant in a civil action, Mississippi law directs that they enjoy qualified public official immunity.

> "Our law thus directs that a governmental official has no immunity to a civil action for damages if his breach of a legal duty causes injury and (1) that duty is ministerial in nature, or (2) that duty involves the use of discretion and the governmental actor greatly or substantially exceeds his discretion and the Governmental actor greatly or substantially exceeds his authority and in the course therefor causes harm, or (3) the governmental actor commits an intentional tort. Beyond that, a governmental official has no immunity when sued upon a tort that has nothing to do with his official position or decision making function and has been committed outside the course and scope of his office." Grantham v. Dept. of Corrections, 5222 So.2d 219 (Miss. 1988).

Since the purpose of qualified immunity is the protection of the official in their decision making role, qualified immunity will not apply unless the action involves a discretionary decision making process. McOueen v Willlams, 587 So.2d 918, 921. It has already been established that the Defendants were performing discretionary duties. (Citation omitted).

Qualified Immunity for the state law claims alleged the Defendants in their individual capacity will not apply for

the same reasons set forth above. The Court finds that the actions of the individual Defendants at a minimum exceeded their authority and at most is tantamount to tortious conduct, therefore, qualified immunity is not applicable.

CONCLUSION

DAMAGES

The Plaintiffs had a duty to mitigate damages. The Supreme Court found the Plaintiffs "failed to act consistently with that duty" and remanded back to the trial Court for clarification on this issue. 722 So.2d 530 at 544 citing Birdson v. Ellis, 62 Miss. 418 (1884).

The prior Chancellor ruled the re-employment offer from the Defendant was not genuine, therefore it appears he did not consider the mitigation issue. In accordance with the Supreme Court's ruling that the Plaintiffs failed to mitigate their damages, this Court determines the breach of contract damages should be calculated from the date of termination, June 30, 1986 to the date of the re-employment offer, December 1, 1986, approximately 5 months. Dr. Venkataramiah's annual salary was $43,840.00, his monthly wage was $3,653.33 x 5 months = $18,266.65 Dr. Lakshmi's annual salary was $38,604.00 and his monthly wage was $3,271.00 x 5 months = $16,085.00.

Based on the evidence presented at trial this Court found that the Defendants violated the substantive due process rights of both Plaintiffs. This violation rises from the breach of the employment contract and therefore the Court awards damages identical to those assigned for the breach of contract claim. Dr. Venkataramiah is hereby awarded a sum equal to five months employment which the Court determines to be $18,266.65. Dr. Lakshmi is hereby awarded

a sum equal to five months employment which the Court determines to be $16,085.00.

Based on the evidence presented at trial and the reasons stated herein, this Court found that the Defendants violated Section 42 U.S.C. Section, 1983 by intentionally discriminating against the minority Plaintiffs based on their race. The Court hereby awards as damages the amount of $173,466.70 to Dr. Venkataramiab and $147,830.00 to Dr. Lakshmi. The total damages, awarded to each are as follows: $210,000.00 to Dr. Venkataramiah and $180,000.00 to Dr. Lakshmi. This award of damages is identical to award of damages pursuant to the direction of the Mississippi Supreme Court.

The award of attorney's fees in the amount of $71,000.00 by the prior Chancellor is appropriate based on the findings of this Court. Attorney's fees are available to prevailing Plaintiffs in Section 1983 cases. The United States Supreme Court has held that, regardless of whether the suit is brought in Federal or State Court, attorneys fees may be awarded under 42 U.S.C., Section 1988 to any party which prevails on a 1983 claim. Maine v. Thiboutot, 448 U.S. 1 (1980).

Therefore, based on the above findings this Court reawards attorney's fees in the amount of $71,000.00.

The attorney for the Plaintiffs shall prepare a Judgment consistent with this ruling and submit it to opposing counsel and have same to the Court on or before the 12th day of October, 2001.

RENDERED, this the 12th day of September, 2001.

APPENDIX C

Supreme Court of Mississippi.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants-Appellants,

v.

Kumar AMARANENI, Administrator of the Estate of Amaraneni Venkataramiah and G.J. LAKSHMI,
Plaintiffs-Appellees,

Nos. 91-CA-00172-SCT

Decided: October 8, 1998

Reversed and remanded.
Banks, J., filed separate opinion, which Sullivan, P.J., and Waller, J., joined.
McRae, J., joined in result only and filed dissenting opinion.
Mills, J., dissented and filed opinion in which Prather, C.J., and James L. Roberts, Jr. and Smith, JJ., joined.

En Banc.

PER CURIAM.

§ 1. A majority of the court agrees that the judgment of the trial court must be reversed but fails to agree on the disposition thereafter. Because we cannot agree on any instructions to guide the lower court, we remand the case to be decided on such principles as the trial judge may deem right. *See* McNutt v. Lancaster, 17 Miss. 570 (1848).

***531** BANKS, Justice, delivers the following opinion:
§ 2. This matter is before the Court on various state and

federal claims, most notably a claim by the plaintiffs under 42 U.S.C. § 1983 that their civil rights were violated on account of their race and national origin. We conclude that the State is not a "person" under the federal statute pursuant to the United States Supreme Court's holding in *Will v. Michigan Department of State Police,* and should have been dismissed from this suit as to that claim. We also conclude that the plaintiffs' procedural due process rights were not violated. The plaintiffs presented a viable claim against the individuals under 42 U.S.C. § 1983. The chancellor, however, applied an erroneous standard under federal law in finding discriminatory intent on the part of the individual defendants and misapplied the law concerning damages. Thus, we reverse and remand for further proceedings. [FN1]

> FN1. This Court recognizes that the chancellor who originally tried this case no longer sits on the bench. Thus, if the new chancellor is satisfied that he cannot make the required findings, he or she may elect to grant a new trial. Miss. R. Civ. P. 63(b).

I.

§ 3. The Board of Trustees of State Institutions of Higher Learning (IHL) has authority over the Gulf Coast Research Laboratory (GCRL) pursuant to Miss.Code Ann. § 37-101-21 (1996). Dr. G.J. Lakshmi was hired in 1970 and Dr. A. Venkataramiah (also referred to as Dr. Ramiah) was hired in 1969 as scientists at GCRL. They were hired to create the Physiology Section of GCRL and conduct research on shrimp. Both were hired by Dr. Gordon Gunter, Director of GCRL. They testified that they were led to believe that they would have continuing employment. Dr. Gunter indicated that he thought their employment was permanent, although

there no written contract of employment. Drs. Ramiah and Lakshmi relied on Dr. Gunter's assurance as Director of GCRL in 1969 and 1970 when they were hired that their employment was continuous. In addition, Dr. Ramiah presented documentation from Dr. Howse indicating that Dr. Ramiah was a "permanent" employee of GCRL. Testimony was offered that indicated that Plaintiffs experienced a hostile work environment.

§ 4. In 1985, Dr. Howse, the new GCRL Director, learned of budget problems that the State of Mississippi was experiencing that might result in reduced appropriations to GCRL. In May of 1986, after receiving a reduced financial appropriation from the state legislature as expected, Howse requested, and the Board of Trustees for IHL approved, a reduction in force plan. At the time the reduction in force was declared, GCRL had approximately 130 employees, 9 of whom were minorities. Ramiah and Lakshmi were the only minorities on the senior staff. Under the plan 34 people were terminated, 8 of whom were minorities and 26 non-minorities. On May 16, 1986, Drs. Ramiah and Lakshmi received letters from Dr. Howse terminating their employment with GCRL pursuant to the reduction in force plan. Shortly thereafter they submitted written objections to their terminations and requested that a hearing be provided to appeal their terminations. On June 30, 1986, the Workforce Reduction Appeal Panel submitted a final report finding that the plaintiffs' terminations were fair and reasonable.

§ 5. Both Ramiah and Lakshmi were offered opportunities for reemployment with GCRL on November 21, 1986. These offers were to assume their previous jobs for a period through June 30, 1987. However, they refused the offers in a letter drafted by legal counsel representing both parties in this matter.

§ 6. On May 18, 1987, Ramiah and Lakshmi filed a seven-count complaint in the Chancery Court of Jackson County, Mississippi. Count I charged that Defendants Howse and Cook in their individual capacities conspired to and did induce GCRL to unlawfully discharge the plaintiffs because of their race and national origin. Count II charged that the individual defendants unjustifiably interfered with their contracts of employment with GCRL because of the plaintiffs' race and national origin. Count III charged that the individual defendants interfered with the plaintiffs' prospective economic advantages because of their race and national origin and ***532** because the plaintiffs refused to compromise ethical and scientific standards. Count IV charged that GCRL unlawfully breached the plaintiffs' respective contracts of employment as a result of GCRL's policies and practices of discrimination based on race and national origin and because the plaintiffs refused to compromise ethical and scientific standards. Count V charged that the defendants, by their actions, tortiously violated the plaintiffs' constitutional rights by depriving them of due process, equal rights and privileges under the law, and freedom of speech because of the plaintiffs' race and national origin and because they refused to compromise ethical and scientific standards. Count VI charged the defendants with libel per se and per quod. Count VII charged the defendants with a violation of Miss.Code Ann. § 95-1-1, the "actionable words" or "anti-dueling" statute. Ramiah and Lakshmi sought injunctive and declaratory relief as well as compensatory and punitive damages.

§ 7. On June 17, 1987, the Attorney General for the State of Mississippi filed a motion to dismiss the complaint. On March 22, 1988, the State's motion to dismiss was denied and the appellants/defendants filed an answer to the complaint on March 30, 1988. Thereafter, trial was commenced in the Chancery Court of Jackson County, Judge

Kenneth B. Robertson presiding. The chancellor issued an Opinion of the Court on July 3, 1990, in which injunctive relief for reinstatement was denied. The lower court also issued a Supplemental Opinion Number 1 on October 11, 1990; a Corrected Supplemental Opinion on October 15, 1990; a Supplemental Opinion Number 2 on October 16, 1990; a Supplemental Opinion Number 3 on October 18, 1990; and a Supplemental Opinion Number 4 on October 20, 1990. In spite of the numerous claims listed in the complaint, the findings and conclusions of the court focused almost exclusively on the plaintiffs' civil rights claim against GCRL and the individual defendants under 42 U.S.C. § 1983. A final judgment was entered in favor of the appellees on January 16, 1991, granting Dr. Ramiah $210,000 and Dr. Lakshmi $180,000 in damages. Also, the plaintiffs were granted $71,000 in legal fees, apparently by authority of 42 U.S.C. § 1988(b), which allows for attorneys' fees where a violation of § 1983 is proved. On February 14, 1991, Defendants filed an appeal to this Court.

II.

§ 8. Our standard of review in this appeal is well settled. This Court will not disturb a chancellor's findings " 'unless the chancellor was manifestly wrong, clearly erroneous, or applied an erroneous legal standard.' " *Merchants & Planters Bank of Raymond v. Williamson*, 691 So.2d 398, 402 (Miss.1997) (*quoting Tinnin v. First United Bank of Mississippi*, 570 So.2d 1193, 1194 (Miss.1990)); *United S. Bank v. Bank of Mantee*, 680 So.2d 220, 222 (Miss.1996).

III.

§ 9. While multiple charges were listed in the complaint filed by Ramiah and Lakshmi, the findings and conclusions of the court below focused on the liability of GCRL and the individual defendants under 42 U.S.C. § 1983. The

appellants/defendants argue that the trial court erred in finding liability under the federal statute because several defenses are applicable to insulate GCRL, and Dr. Howse and Dr. Cook in their official capacities, from liability. They claim that these defendants do not come within the definition of "persons" as defined by 42 U.S.C. § 1983. Next, they claim that the decision which led to the termination of the appellees was an exercise of discretionary authority by a state employee which is protected under the doctrine of sovereign immunity. Finally, the appellants argue that Dr. Howse and Dr. Cook are entitled to qualified immunity because each was operating within the parameters of objective reasonableness and under the mandates of the Board of Trustees which has authority over GCRL. The appellants contend that the foregoing defenses preclude any finding of liability, and that the trial court was manifestly in error when it failed to dismiss the case.

1. The State as Defendant under 42 U.S.C. § 1983

§ 10. The appellants' first contention is that the lower court should have dismissed GCRL, as well as Dr. Howse and Dr. Cook in ***533** their official capacities, at the outset of the litigation. They claim that states and state agencies are not "persons" for purposes of 42 U.S.C. § 1983. Section 1983 reads as follows:

Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a

statute of the District of Columbia.

42 U.S.C. § 1983 (1994).

§ 11. The Institutions of Higher Learning have consistently been held to be agents of the State. *See Jagnandan v. Mississippi State Univ.*, 373 So.2d 252, 253 (Miss.1979), *overruled on other grounds by Pruett v. City of Rosedale*, 421 So.2d 1046 (Miss.1982); *Bruner v. University of S. Mississippi*, 501 So.2d 1113, 1115 (Miss.1987); *Sorey v. Kellett*, 849 F.2d 960 (5th Cir.1988). Moreover, under *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989), the United States Supreme Court ruled that states and state agencies are not within the class of potential defendants under § 1983: "[w]e hold that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will*, 491 U.S. at 71, 109 S.Ct. 2304. *Will* was decided before final judgment was rendered in the court below, and a proper Motion to Dismiss for failure to state a claim had been filed by the Attorney General on June 17, 1987. Thus GCRL, as well as Dr. Howse and Dr. Cook in their official capacities, should have been dismissed as parties to the § 1983 claim.

§ 12. Ramiah and Lakshmi incorrectly assert that *Will* was overruled by *Hafer v. Melo*, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). *Will* stands for the proposition that state officials acting in their official capacity are not statutory "persons" under § 1983. In *Hafer*, the Court took up the separate definitional issue of whether state officials, in their *individual* capacities, are such statutory "persons." The petitioner in *Hafer* sought a broad reading of the restriction imposed by *Will*, arguing that § 1983 does not authorize suits against state officers for damages arising from official acts. *See Hafer*, 502

U.S. at 23, 112 S.Ct. 358. However, the phrase, "acting in their official capacities" refers not to the capacity in which the officer inflicts the injury, but in the capacity in which the officer is sued. *Id.* at 26-27, 112 S.Ct. 358. To hold otherwise, the Court observed, would erase the distinction between official and personal capacity suits. Simply stated, individual defendants in § 1983 suits are not automatically shielded from personal liability under § 1983 "solely by virtue of the 'official' nature of their acts." *Id.* at 31, 112 S.Ct. 358.

§ 13. Thus, *Hafer* does not disturb the holding in *Will,* which dictates that GCRL, and Dr. Howse and Cook in their official capacities, should have been dismissed in a suit for damages under § 1983. *Hafer* stands only for the proposition that Dr. Howse and Dr. Cook, in their individual capacities, are "persons" under § 1983, and could properly be sued under the federal statute. Since the mandate of *Will* is clear, GCRL's defense of sovereign immunity need not be addressed.

2. Qualified Immunity for Individual Defendants Howse and Cook

§ 14. Dr. Howse and Dr. Cook claim they are entitled as individuals to the defense of qualified immunity, under both federal and state law standards. While it is a close question, we agree with the appellants on the threshold issue of whether Howse and Cook were performing discretionary duties when they implemented the reduction in force plan. "An official acts within his discretionary authority when he performs nonministerial acts within the boundaries of his official capacity." *Tamez v. City of San Marcos,* 118 F.3d 1085, 1091-92 (5th Cir.1997). As head of GCRL, Howse decided whether to request the declaration of financial exigency. And while ***534** GCRL was required to get final approval from IHL for actions

taken under the reduction in force plan, it was Howse and Cook who designed the criteria for implementing the plan. Their actions here were not pursuant to specific orders, or spelled out in minute detail beforehand. *See id.* Thus, some degree of deliberation or judgment characterized the actions of the defendants and as such these actions are discretionary.

§ 15. Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the "objective legal reasonableness" of the action, assessed in light of the legal rules that were "clearly established" at the time it was taken. The Fifth Circuit has recently outlined this standard as it relates to the employment context:

To determine whether qualified immunity applies, a court must first determine whether the plaintiff has asserted a violation of a constitutional right. *Siegert v. Gilley*, 500 U.S. 226, 231, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277 (1991). This determination is made using currently applicable constitutional standards. *Nerren v. Livingston Police Department*, 86 F.3d at 473. If so, the court must then decide if the defendant's conduct was objectively reasonable, using the standards applicable at the time the events occurred. *Id; Johnston v. City of Houston*, 14 F.3d at 1059. If, upon viewing the evidence in the light most favorable to the nonmovant, reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to qualified immunity. *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S.Ct. 3034, 3038, 97 L.Ed.2d 523 (1987), citing *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir.1990).

Southard v. Texas Bd. of Criminal Justice, 114 F.3d 539, 550 (5th Cir.1997). Stated in simple terms, officials performing discretionary functions are shielded from civil

damages liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson*, 483 U.S. at 638, 107 S.Ct. 3034.

§ 16. Qualified immunity will not protect officials who knowingly violate the law. *See Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986). As we will discuss, this Court is remanding for more specific findings and conclusions on the issue of whether Howse and Cook intentionally discriminated against Ramiah and Lakshmi. The issue of qualified immunity is dependent upon this determination, since it can fairly be said that intentional discrimination on the basis of race or ethnic heritage would constitute objectively unreasonable grounds on which to terminate the plaintiffs.

§ 17. The issue of qualified immunity for the various state law claims against Howse and Cook as individuals is resolved similarly. Discretionary duties are those positively imposed by law but which are dependent upon an officer's judgment or discretion. *See Bankston v. Pass Rd. Tire Ctr., Inc.*, 611 So.2d 998, 1008-09 (Miss.1992). Common law qualified immunity has traditionally sought to protect the discretion of public officials so that those officials would not be deterred by the threat of suit from making decisions and formulating policies that are in the public good. *State v. Lewis*, 498 So.2d 321, 322 (Miss.1986); *T.M. v. Noblitt*, 650 So.2d 1340, 1343 (Miss.1995). However, qualified immunity does not protect those who engage in egregious behavior:

Our law thus directs that a governmental official has no immunity to a civil action for damages if his breach of a legal duty causes injury and (1) that duty is ministerial in nature, or (2) that duty involves the use of discretion and the governmental actor greatly or substantially exceeds his

authority and in the course thereof causes harm, or (3) the governmental actor commits an intentional tort.

Grantham v. Mississippi Dept. of Corrections, 522 So.2d 219, 225 (Miss.1988). Ramiah and Lakshmi claimed that the appellants exercised excessive authority and in effect committed an intentional tort. If this is found by the chancellor to be true, then qualified immunity for the state law claims does not apply.

IV.

§ 18. Uniform Chancery Court Rule 4.01 and Miss.R.Civ.P. 52 authorize the trial ***535** court to make specific findings of fact and state separately its conclusions of law thereon. While Miss.R.Civ.P. 52 "gives the court discretion to make such findings absent a party's request, it further provides, as does Uniform Chancery Court Rule 4.01, that a chancellor 'shall' make such findings when required or requested by a party to the suit." *Century 21 Deep S. Properties, Ltd. v. Corson*, 612 So.2d 359, 366 (Miss.1992). One of the principal rationales for this rule is to provide the appellate court with guidance as to what the trial court actually did, that is, what facts it found and what law it applied. Jeffrey Jackson, Mississippi Civil Procedure § 13:5 (1997). With this in mind, this Court has held that in complex cases tried upon the facts without a jury, Miss.R.Civ.P. 52 should be construed to read that the lower court "generally should" find facts specially and separately state its conclusions of law thereon even absent a request by a party. *Tricon Metals & Services, Inc. v. Topp*, 516 So.2d 236, 239 (Miss.1987).

§ 19. Ordinarily, Rule 52 is invoked where the trial court has failed to make specific findings of fact after a request by one of the parties. In *Tricon Metals*, for example, the Chancery Court made no findings of fact or conclusions of

law. This Court stated that it was "virtually precluded [from] performance of our normal appellate review responsibilities within accepted legal and institutional channels," *Tricon Metals*, 516 So.2d at 237, and noted that "[a]s a practical matter, we can better perform our function if we know what the trial court did, and why." *Id.* at 239. After considerable review of the present case, we conclude that certain of the plaintiffs' claims may yet have validity. However, we must remand to the lower court for more specific findings and conclusions for the reasons which follow.

1. The Validity of the § 1983 Claim against Individual Defendants Howse and Cook

§ 20. *Hafer* allows Howse and Cook to be sued in their individual capacities under § 1983. Both parties in this appeal acknowledge that the standard from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) is applicable in a suit under § 1983. The federal judiciary has acknowledged that the required elements of prima facie proof necessary for a plaintiff charging a racially hostile work environment under both Title VII and § 1983 are the same. *Boutros v. Canton Reg'l Transit Auth.*, 997 F.2d 198, 202 (6th Cir.1993); *Vaughn v. Pool Offshore Co.*, 683 F.2d 922, 924 (5th Cir.1982); *Lee v. Conecuh County Bd. of Educ.*, 634 F.2d 959, 962 (5th Cir.1981) ("[l]ogic dictates that the McDonnell Douglas factors may be used to establish a prima facie case in cases of racially motivated employment discrimination brought under section 1983 whether or not Title VII is used as a parallel remedy"). *See also Hamilton v. Rodgers*, 791 F.2d 439, 442 (5th Cir.1986) (holding that proof of liability for a racially hostile work environment is the same under Title VII, 42 U.S.C. § 1981 and § 1983).

§ 21. In *McDonnell Douglas,* the Court established three distinct procedural stages for proving discriminatory employment practices. First, the complainant must carry the initial burden of establishing a prima facie case of racial discrimination. Appellees argue that under this standard "Ramiah and Lakshmi had the burden of establishing by a preponderance of the evidence that they are members of a racial minority, that they were qualified for a particular position, and that similarly or less qualified persons were selected in their place." *See McDonnell Douglas,* 411 U.S. at 802, 93 S.Ct. 1817; *Lee v. Conecuh County Bd. of Educ.,* 634 F.2d 959 (5th Cir.1981). After a prima facie case is made, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection. *Id.* at 962. Until recently, the third prong of the *McDonnell Douglas* test required the plaintiff to prove by a preponderance of the evidence that the employer's professed non-discriminatory reason was merely a pretext for discrimination. *McDonnell Douglas,* 411 U.S. at 804, 93 S.Ct. 1817.

§ 22. This standard was somewhat altered in the recent case of *St. Mary's Honor Center v. Hicks,* 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993). Under *Hicks,* the first two steps of the *McDonnell Douglas* test remain essentially the same. ***536***Hicks,* 509 U.S. at 506-10, 113 S.Ct. 2742. The plaintiff must prove a prima facie case and the employer then has the burden to produce a non-discriminatory reason for the discharge. *Id.* Should the employer meet this burden, the plaintiff is then required to prove by a preponderance of the evidence " 'that the defendant intentionally discriminated against [him]' because of his race" or gender. *Id.* at 511, 113 S.Ct. 2742 (citation omitted). While "[t]he factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity)

may, together with the elements of the prima facie case, suffice to show intentional discrimination," *Id.*, simply disproving the defendant's non-discriminatory explanation, in and of itself, is no longer sufficient to establish a claim of unlawful discrimination. Rather, the plaintiff must prove that the defendant was impermissibly motivated by the plaintiff's race in taking its adverse personnel actions. *Id.* at 517-18, 113 S.Ct. 2742. Thus, under *Hicks* the chancellor's rejection of the defendants' asserted reasons for their actions does not entitle Ramiah and Lakshmi to judgment as a matter of law on the grounds of racial discrimination. As the State correctly argues, they must prove discriminatory intent.

§ 23. As to the plaintiffs' prima facie case, the appellees are Asian- Indians which classify them as minorities. Both have Ph.D.s in the field of science and have conducted research that has been published in scholarly journals. Testimony was given at trial that their qualifications were never in question. However, it is not entirely clear whether others were selected in their place. While the appellees contend that they were replaced by one Harriet Perry, this is not clearly supported by the record. Ms. Perry occupies the physical space where the appellees formerly worked. However, she is nominally assigned to the Fish Research and Development Section. Additionally, there are indications that others were hired after the appellees were fired, but whether these people were hired to replace Appellees is uncertain. The Physiology Section, at least in form, was closed. However, on remand, the lower court should make specific factual findings as to whether employees who were rehired after the termination of the plaintiffs were hired to replace them.

§ 24. Assuming that Ramiah and Lakshmi established a

prima facie case of racial discrimination, the burden shifted to Howse and Cook to articulate some legitimate, nondiscriminatory reason for the employee's rejection. The appellants argue that Ramiah and Lakshmi were lawfully terminated under a reduction in force plan.

§ 25. In May of 1986 a Reduction in Force Plan was authorized by IHL that stated the following:
According to the Gulf Coast Research Laboratory's "Reduction in Workforce" policies, the Director declares that, due to the institution's Fiscal Year 1986-87 budget cuts, a reduction in programs, services, and positions is now necessary.

The Reduction in Force plan was a reaction to a financial crisis that GCRL expected to experience for the 1986-87 fiscal year. According to calculations made by GCRL business engineer, Kris Fulton, GCRL had for the 1986-87 fiscal year projected revenues of $2,873,533 and expenditures of $3,567,919, which would yield a deficit of $694,386, or twenty-four percent. As a result of these projections, a report was submitted to IHL which indicated that a substantial reduction in personnel and additional reductions were needed to deal with the deficit.

§ 26. The record is unclear as to whether the financial exigency was genuine. The appellees allege that the financial crisis was "over before it began." They contend that there were no economic problems severe enough to justify the declaration of a financial exigency at GCRL. As evidence of this they indicated significant expenditures were made during the period of financial exigency:
[C]ertain favored scientists at the GCRL spent money as though no crisis had ever existed. Hundreds of thousands of dollars of the funds granted by the U.S.D.A. for shrimp research were utilized by GCRL to purchase electron

microscopes and for extensive and expensive travel by various employees of GCRL throughout the "exigency." Employees who remained at GCRL during the "financial exigency" ***537** were actually given raises, and little consideration was given the obligation of the GCRL to reemploy, where possible, its lost employees even though the money was clearly available to do so.

§ 27. The defendants, on the other hand, argue that fiscal realities had to be met which were brought on when GCRL was notified that its appropriation would be reduced. The appellants contend "there is simply no proof that Defendants acted in concert to deny Plaintiffs any constitutionally protected rights in making a determination how the budget at GCRL could be reduced." The chancellor's findings are ambiguous on this point. He observed only that "[w]hatever financial exigency that may have existed lasted less than 30 days." Thus, on remand, it must also be clarified as to whether Howse and Cook have articulated a legitimate and facially nondiscriminatory reason for terminating Ramiah and Lakshmi. This hinges on a specific factual finding of whether the financial exigency was genuine.

§ 28. Finally, the plaintiffs must prove discriminatory intent on the part of the defendants. In the context of racial discrimination, this has typically meant that an action is not unconstitutional *solely* because it has a racially disproportionate impact. *See* Washington v. Davis, 426 U.S. 229, 238-42, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976); *Vera v. Tue*, 73 F.3d 604, 609 (5th Cir.1996). Ramiah and Lakshmi allege various claims under federal law, including an argument that the reduction in force plan was part of a conspiracy to discriminate against them and displace them from their positions at GCRL. Under all of these theories, the plaintiffs are required to establish a

discriminatory motive on the part of the defendants. "In order to state a claim of racial discrimination under the Equal Protection Clause and § 1983, the plaintiff must demonstrate that the governmental official was motivated by intentional discrimination on the basis of race." *Coleman v. Houston Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir.1997). "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). Likewise, a cause of action for racial discrimination in the making and enforcement of contracts, under § 1981, requires the plaintiff to demonstrate intentional discrimination. *General Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 391, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982); *National Ass'n of Gov't Employees v. City Pub. Serv. Bd. of San Antonio*, 40 F.3d 698, 714 (5th Cir.1994). Finally, to recover damages for a conspiracy to deny individuals the equal protection of the laws under § 1985 the plaintiff must demonstrate that the defendants were motivated by an invidious discriminatory animus. *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971); *Almon v. Sandlin*, 603 F.2d 503, 505 (5th Cir.1979).

§ 29. The chancellor's findings on the issue of discriminatory intent are insufficiently specific to give this Court confidence that a proper legal standard was applied. The chancellor placed heavy emphasis on the fact that only one minority employee remained at GCRL after the terminations, and found that "[e]ven though the evaluation plan had the facade of fairness, ... [t]he number of minorities affected is beyond coincidence and the evidence presented shows a pattern of discrimination, whether intentional or not, because Affirmative Action was ignored." Thus, it seems the lower court based its

conclusion on the perceived disparate impact that the chosen terminations had on the minority employees of GCRL. Moreover, the chancellor's equivocation on the issue of whether the defendants' actions were "intentional or not" is evidence of a mistaken view of the applicable standard under federal law. Thus, we reverse and remand on this point for more definite findings and conclusions as to the issue of the defendants' discriminatory intent.

§ 30. We note that there is some support in the record that Defendants Howse and Cook intentionally discriminated against Ramiah and Lakshmi. The chancellor found that the Affirmative Action Plan at GCRL was suspended. In addition, the record supports a reasonable inference that the criteria designed by the defendants conveniently targeted the Physiology Section and in particular ***538** Drs. Ramiah and Lakshmi. Dr. Cook agreed that although Ramiah and Lakshmi had the most seniority of the senior staff at GCRL, this factor was given little if any consideration in the reduction in force. The time period during which review of grants and funding were measured began right after Dr. Ramiah had suffered a heart attack and was temporarily unable to seek funding. The plaintiffs also asserted that the time period began right after a period in which Dr. Cook had brought in no significant funding, and that the three-year period for review of publications began immediately after Dr. Ramiah's last major publications. Three witnesses, Dr. Edwin W. Cake, Jr., Dr. James T. McBee, Jr., and Dr. John P. Steen, Jr., testified that the criteria used to judge the productivity of the various sections at GCRL were unfair.

§ 31. In addition, Lakshmi testified that the appellees were confronted with a work environment that was not free of racial animus, and that when she told Howse about it he denied that it existed. Ramiah and Lakshmi were the only

minorities on the senior scientific staff at the time the reduction in force was implemented and both were terminated.

§ 32. There is also the question of whether the Physiology Section of GCRL rationally fits into the category of "expendable." According to Dr. Howse, the primary reason the Physiology Section of GCRL was targeted by the reduction in force plan was because the Physiology Section was considered "peripheral" to the major function of GCRL. In particular, the factors for eliminating the Physiology Section were
1) Physiology is an expensive section to maintain; 2) the section does not have any outstanding contract obligations; 3) Physiology has not been a discipline which is central to the focus of the Laboratory.

§ 33. The contention that the Physiology Section was expensive to maintain may have some validity in comparison to the other sections at GCRL. In the five year period preceding the financial exigency, the period picked by Howse and Cook to measure the relative productivity of the various sections, the Physiology Section ranked fourth lowest out of seventeen sections in terms of the ratio of state funds to outside funds used to finance operations. In terms of actual dollars necessary for operations during this time, Physiology ranked fourth most expensive. However, Cook admitted in his testimony that if the period of measurement had been several years longer, the funding credited to the Physiology Department would have been significantly more. From the record, it appears that from 1978 to 1980 the plaintiffs received a grant of $200,000.00, and from 1980 to 1981 they received a grant of $125,000.00. In terms of the number of journal publications each section had between 1981 and 1984, the Physiology Section placed ninth. In comparisons

regarding the number of proposals funded for research Physiology ranked eighth. Therefore, the fact that the Physiology Section was not the most productive section at GCRL, but did tally expenses in excess of the other sections tends to support the argument that the Physiology Section was expensive to maintain.

§ 34. The record indicates that the Physiology Section had two outstanding contract obligations at the time Appellees were hired that roughly equaled half of their salaries or $55,000. According to deposition testimony by Kris Fulton there was about $55,000 in outstanding grant funds that the Physiology Section did not get to because of the reduction in force.

§ 35. The issue of whether the Physiology Section was expendable or peripheral to GCRL is extremely difficult. The testimony given by Dr. Howse as to the meaning of "peripheral" reveals the difficulty in determining the importance of the Physiology Section.

That doesn't mean that it is not vital. That doesn't mean that it is not desirable. That simply means it is not in the central focus. My philosophy, my actions, since I've been Director is trying to take to the Legislature a plan that we want to develop a well balanced marine laboratory. That would include a number of different areas of discipline, disciplines that we don't have and Physiology would be one of them, Biochemistry would be another, Genetics would be another; Zoology would be another. ***539** Those are all vital, but some of them would be peripheral.

The Physiology Section was thus described as both vital and outside the central focus of GCRL. From an objective reading of GCRL's "Personnel Policies and Procedures Gulf Coast Research Laboratory Handbook for Employees" there is no designation among any of the

general research sections as peripheral or non- peripheral. In addition, there is strong evidence that the Physiology Section was well-respected because of its work in the field of ecological research. [FN2] The Physiology Section's relationship with several organizations in the environmental research community was outstanding. Thus, a fair-minded factfinder could conclude that the Physiology Section was not an expendable or peripheral part of GCRL's operation.

FN2. There are several letters in the record that attest to the importance of the Physiology Section and its work with organizations conducting research.

§ 36. While this evidence is not overwhelming, we cannot conclude that when considered as a whole the record is so lacking in evidence of discriminatory animus on the part of the defendants as to support a judgment as a matter of law in their favor. Thus, we decline to render a decision for defendants in this case.

2. The State Claims

§ 37. The appellants listed numerous state claims in their complaint. In Count I the plaintiffs alleged that the defendants acted in concert to accomplish unlawful purposes, most notably to breach their respective contracts of employment. In Count II of the complaint, Ramiah and Lakshmi charged that the defendants intentionally interfered with their contractual relationship with GCRL. In Count III they charged that the defendants interfered with their prospective economic advantages. These three charges are directed at the individual Defendants Howse and Cook, and thus will not support a judgment against GCRL. In any event, Counts I, II and III are torts and there

is little doubt that GCRL would be protected from such claims by the doctrine of sovereign immunity. Where suits are grounded in tort, agencies of the state may not be sued absent a "clear and unambiguous statute waiving sovereign immunity." *Employers Ins. of Wausau v. Mississippi State Highway Comm'n*, 575 So.2d 999, 1002 (Miss.1990).

§ 38. In Count IV of the complaint, however, the plaintiffs charged that GCRL unlawfully breached their respective contracts of employment as a result of GCRL's policies and practices of discrimination based on race and national origin and because the plaintiffs refused to compromise ethical and scientific standards. If this claim--for which injunctive relief was sought--is supported by the chancellor's findings, then GCRL is not immune. Sovereign immunity only applies to tort claims, and should not be construed to immunize governmental authorities and agencies from suits other than for money damages. *Fordice v. Thomas*, 649 So.2d 835, 839-40 (Miss.1995).

§ 39. Whatever immunity may apply to these various state claims, and whatever validity the claims may in fact have, this Court is concerned that these claims were never considered or ruled upon by the lower court. The chancellor's findings and conclusions focus upon the plaintiffs' § 1983 claim--perhaps because he felt that consideration of these claims was unnecessary. The chancellor's Supplemental Opinion Number 2 consists of a list of references, almost exclusively consisting of federal law, which he supposedly considered in rendering judgment. However, such a listing does not constitute conclusions of law, for they do not instruct this Court of the reasons the lower court ruled as it did. As such, we are "virtually precluded [from] performance of our normal appellate review responsibilities within accepted legal and

institutional channels." *Tricon Metals*, 516 So.2d at 237.

§ 40. We note that these contract-related issues depend initially on whether a valid contract for permanent employment can be said to have existed between the plaintiffs and GCRL even though no written contract existed. There is evidence in the record that the plaintiffs considered their employment to be permanent, and testimony by Dr. Gunter indicates that he originally hired them as permanent employees. The claim for a ***540** breach of an oral contract for a definite term, if with a basis in fact, takes the case outside the operation of the presumption of at will employment. Controverted testimony regarding the contemplated length of employment creates an issue of fact as to the existence of an oral contract for a definite term *vel non*. *Bowers Window & Door Co. v. Dearman*, 549 So.2d 1309, 1313 (Miss.1989); *Short v. Columbus Rubber & Gasket Co.*, 535 So.2d 61, 64 (Miss.1988). The chancellor did find that Dr. Gunter "actively solicited the employment of Dr. Venkataramiah and Dr. Lakshmi at GCRL and maintained permanent employees consistent with the policy of his administration as Director of GCRL...." We cannot say that this finding of fact is manifestly erroneous, and thus it can fairly be established that the plaintiffs had permanent contracts of employment with GCRL.

§ 41. However, even assuming that a contract of employment existed, GCRL may have argued a defense under the Statute of Frauds. To be enforceable under the statute, there must be sufficient written evidence to substantiate the contract. Miss.Code Ann. § 15-3-1(d) (1995); *Bowers*, 549 So.2d at 1313. Moreover, the length of employment is a substantial term which must be included in the writing. *Id.*; *Short*, 535 So.2d at 64. In the present case, no written contract of employment

existed. Thus, the dispositive issue may be whether the doctrine of equitable estoppel applies as an exception to the Statute of Frauds. This doctrine applies as an exception to the statute where the plaintiff shows "(1)that he has changed his position in reliance upon the conduct of another and (2) that he has suffered detriment caused by his change of his position in reliance upon such conduct." *PMZ Oil Co. v. Lucroy*, 449 So.2d 201, 206 (Miss.1984).

§ 42. As we observed in *PMZ*, the failure by the chancellor to make an express finding of detrimental reliance is not fatal where the finding is necessary to the result reached by the lower court. *Id.* at 205. However, the opinions of the court in this case make it uncertain whether these issues were ever considered by the chancellor, and thus, it is unclear whether the state claims were valid. Thus, on remand, the lower court should consider these various state law claims and make specific findings and conclusions as to the validity of each.

§ 43. We note further that if the chancellor finds that the contract of employment was enforceable, the possibility still exists that the plaintiffs were terminated for permissible cause under the financial exigency, since even tenured employees can be terminated under valid reduction in force plans. Thus, the ultimate validity of the state claims likely rises or falls on the same evidence as the § 1983 claim against Howse and Cook. That is, much depends on the chancellor's finding on remand that the financial exigency was genuine, and whether the defendants acted against the plaintiffs out of unlawful racial animus. *See* *Cenac v. Murry*, 609 So.2d 1257 (Miss.1992) (all contracts contain implied covenants of good faith and fair dealing in performance and enforcement). *See also* Restatement (Second) of Contracts § 205 (1981).

V.

§ 44. In Count V of the Complaint, Ramiah and Lakshmi charged that the defendants, by their actions, tortiously violated their constitutional rights by depriving them of due process. We address first the procedural aspects of this claim. The chancellor made a finding that the appeal procedure of the reduction in force plan was arbitrary and capricious. The appellants claim the decision by the trial court was manifest error because the appellees were granted the appropriate notice and hearing consistent with the due process standard articulated in *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975) and *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978).

§ 45. For any due process claim to succeed against a state or state agency, the alleged wrongful conduct must be a product of state action. *National Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 190, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988); *Shelley v. Kraemer*, 334 U.S. 1, 13, 68 S.Ct. 836, 92 L.Ed. 1161 (1948); U.S. Const., Amend. XIV, § 1. There is little doubt here that the actions of Howse and Cook constituted state action. ***541** " 'The involvement of a state official ... plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment ... rights, whether or not the actions ... were officially authorized, or lawful.' " *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 157 n. 5, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978) (*quoting Adickes v. S. H Kress & Co.*, 398 U.S. 144, 152, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)).

§ 46. Ramiah and Lakshmi claim they had a property right to continuing employment at GCRL which was denied as a result of the reduction in force plan. They further argue that

the hearing provided to appeal their employment dismissal was too narrow in scope and conducted by persons incapable of providing a fair and impartial hearing. Although the appellants use the U.S. Supreme Court holding from *Goss* and *Horowitz*, the due process standard stated in *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) has a more salient application to this appeal. In *Sindermann* the plaintiff served as a college teacher for many years, but in 1969 found that his one-year employment contract was terminated. Sindermann's termination was not preceded or followed by an official statement of the reasons for nonrenewal and no opportunity for a hearing to challenge the basis of the nonrenewal was granted. *Id.* at 595, 92 S.Ct. 2694. In a five-to-four decision, the Supreme Court stated that where a college teacher alleges that rules and understandings have been promulgated by state officials to promote continued employment a hearing must be granted to give the teacher an opportunity to substantiate his claim to such continuing employment. *Id.* at 602, 92 S.Ct. 2694.

§ 47. In this appeal, the appellees allege they had a property right to a tenured faculty position at GCRL. GCRL did not grant the appellees tenure nor was anyone employed at GCRL granted tenure. According to testimony given by Dr. Howse, all employees at GCRL are employed on a year-to-year basis provided that satisfactory performance is maintained. William R. Cleere, Executive Director of the Board of Trustees for IHL, testified that the By-Laws and Policies of IHL require that a tenure committee shall be established at each institution under its jurisdiction, and that GCRL was not exempt from any of the by-laws and policies of IHL. Ramiah and Lakshmi argue that because GCRL failed to have a tenure committee they were denied tenure in violation of IHL by-laws and policies. Dr. Cleere testified, however, that he was not in favor of tenure at GCRL and that IHL did not intend to grant tenure to the faculty at GCRL

because it was not a degree-granting institution but a research site.

§ 48. This Court has held that before a claim of due process can be successful there must be a property or liberty interest in jeopardy that requires protection. *Wicks v. Mississippi Valley State Univ.*, 536 So.2d 20, 22 (Miss.1988). The appellees argue that their property and liberty rights have been violated because of their loss of employment at GCRL. Based on assurances provided by administrators at GCRL and the requirement for a tenure committee at each institution under IHL authority as stated in its by-laws and policies, they contend that their expectation in continued employment at GCRL merits due process protection. [FN3]

> FN3. These assurances related to statements made Dr. Gordon Gunter. Dr. Thomas F. Lytle, another research scientist at GCRL, indicated that he too was given assurances of continued employment but stated that he knew his employment status was not equivalent with tenure.

§ 49. In *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), the plaintiff was employed under a one-year contract that was not renewed and he was not provided with a hearing to challenge the merits of the decision not to rehire him for a teaching job. The plaintiff claimed that he had a property interest in being rehired to the teaching position and that the State had deprived him of that property interest without due process. The *Roth* Court found no property interest deserving of due process protection.

§ 50. Arguably, the property interest in this case is legitimate. *See* Bishop v. Wood, 426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976). It is true that no one has been granted tenure at GCRL. Also, the distinction between GCRL and a university granting ***542** degrees appear to suggest that a programmatic reason exists for not granting tenure to employees at GCRL. These are different types of institutions that offered its employees different benefits. The question, however, is whether there was a responsibility to clarify the difference between those benefits. The Court in *Wicks* held that "a property interest in employment must be decided by reference to state law." *Wicks*, 536 So.2d at 23. Section 37-101-21, Miss.Code Ann. (1996), holds that IHL shall prescribe rules, regulations, and policies at GCRL. Moreover, there is testimony by Dr. Cleere that GCRL was not exempt from any by-laws or rules of IHL. Ramiah and Lakshmi validly contend that they had a property interest in continuing employment that was equal or close to tenured employment. The appellees were hired by a GCRL official without a written contract but with an understanding of permanent employment. The appellees in this case had more than a mere subjective expectation of permanent employment. *Wicks*, 536 So.2d at 23. GCRL failed to establish the tenure committee as per IHL by-laws which deprived the appellees of explicitly tenured employment.

§ 51. Once the appellees were terminated pursuant to the reduction in force plan they were granted a hearing to challenge their dismissal. According to testimony by Dr. Cook, the purpose of the appeal was to provide those dismissed the chance to challenge their dismissal if they felt their dismissal was unfair, arbitrary or capricious. An appeal panel was assembled consisting of three members of GCRL. The panel submitted a report finding that the dismissals were reasonable and fair.

§ 52. The claim by Ramiah and Lakshmi that the appeal panel did not meet due process requirements does not have merit. They contend that the appeal panel was biased and prejudicial, and that the scope of the inquiry was too narrow. A review of Exhibit 11, which explains the panel's findings, indicates that Appellees were allowed to have legal counsel present, call witnesses, and submit documents for the panel to consider prior to rendering its decision. With regard to the Appellees' major concern that the panel members were not impartial, no proof of this allegation exists. It is interesting to note that Appellees only made one objection as to the composition of the panel. This objection was honored and the panel member in question was removed and replaced by another. The appellees were provided procedural due process consistent with the rule of law as explained by the United States Supreme Court. *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); *Board of Curators of the Univ. of Missouri v. Horowitz*, 435 U.S. 78, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978). We thus render a decision on that issue.

VI.

§ 53. While not adequately explained in the conclusions of the lower court nor expressly argued as such in the appellees' brief, within Count V of the Complaint is also a Fourteenth Amendment substantive due process attack against GCRL, a claim which relates to the reduction in force plan under which the Physiology Section was closed and the appellees were terminated. [FN4] The Supreme Court has declared that the Due Process Clause "not only accords procedural safeguards to protected interests, but likewise protects substantive aspects of liberty against impermissible governmental restrictions." *Harrah Indep. Sch. Dist. v. Martin*, 440 U.S. 194, 197, 99 S.Ct. 1062, 59 L.Ed.2d 248

(1979); *Kelley v. Johnson*, 425 U.S. 238, 244, 96 S.Ct. 1440, 47 L.Ed.2d 708 (1976). For the most part, the federal courts considering substantive due process claims by state college or university faculty have applied this approach to property interests as well. *See, e.g., Agarwal v. Regents of the Univ. of Minnesota*, 788 F.2d 504, 507-08 & n. 2 (8th Cir.1986); *Russell v. Harrison*, 736 F.2d 283, 286-92 (5th Cir.1984); *Milbouer v. Keppler*, ***543** 644 F.Supp. 201, 204-06 (D.Idaho 1986). Each of these cases involved both procedural and substantive due process claims, and in each the court made one determination that a property interest existed. As discussed above in the context of procedural due process, the record in the instant case supports a finding that Appellees had a property interest in continued employment.

> FN4. Appellees argued on the assumption that the § 1983 claim against the state would stand, and their allegations of due process violations are argued within this context. However, their claims were not pleaded exclusively as such, and thus a claim based directly on the Fourteenth Amendment's substantive aspects may be brought against GCRL as a State agency.

§ 54. The test for a violation of substantive due process is whether the governmental action is rationally related to a legitimate governmental purpose. *See, e.g., Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124-25, 98 S.Ct. 2207, 57 L.Ed.2d 91 (1978); *Everhart v. Jefferson Parish Hosp. Dist. No. 2*, 757 F.2d 1567, 1571 (5th Cir.1985). In the context of educational and other state institutions, the test has been used interchangeably with the "arbitrary and capricious" standard. *See, e.g., Kelley*, 425 U.S. at 247-48,

96 S.Ct. 1440. The Fifth Circuit has held that to reach the jury with a substantive due process claim, the plaintiff "must demonstrate a genuine issue of material fact about his protected property interest ... and the university's arbitrary or capricious deprivation of that interest." *Honore v. Douglas*, 833 F.2d 565, 568 (5th Cir.1987).

§ 55. For a termination based on financial exigency to satisfy substantive due process, it normally must be shown that: (1) a genuine financial exigency existed, and (2) some rational decision making process was used to select the tenured faculty who were discharged. *See, e.g., Brenna v. Southern Colorado State College*, 589 F.2d 475 (10th Cir.1978) (college's selection criteria found to be reasonable, based on substantial evidence, and made in good faith); *Bignall v. North Idaho College*, 538 F.2d 243, 249-50 (9th Cir.1976) (procedures for termination proper because administrator formulated guidelines applicable to all faculty, consulted with all department heads and considered their evaluations as well as the school's needs, and evidence indicated that plaintiff not well qualified academically); *Milbouer*, 644 F.Supp. at 205 (when eliminating German department administrator made various statistical analyses that supported the elimination). *See* Michael J. Phillips, *The Substantive Due Process Rights of College and University Faculty*, 28 Am. Bus. L.J. 567, 587-88 & n. 116 (1991).

§ 56. In the Fifth Circuit case of *Russell v. Harrison*, 736 F.2d 283 (5th Cir.1984), the plaintiffs alleged that their Fourteenth Amendment rights to due process were substantively violated in connection with their dismissal because neither of the universities who employed them was "acting pursuant to any valid Reduction in Force Policy" when they terminated plaintiffs' contracts of employment; nor did the Board of Trustees have a "uniform Reduction in Force Policy ... applicable to the system as a whole."

Russell, 736 F.2d at 287. The defendants' motion for summary judgment on the substantive due process claim was granted, based on affidavits and testimony which indicated that a genuine financial emergency existed at the two universities, and that plaintiffs' contracts of employment had been terminated based on an analysis of the most efficient staffing per full-time student. The evidence established that the dismissals and salary reductions were based on uniform criteria bearing a reasonable relationship to the universities' financial problem. After noting that " '[t]he Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions,' " the court concluded that "this evidence showed that whether or not defendants' actions were wise, at the least the actions were not arbitrary and capricious, or racially motivated." *Russell*, 736 F.2d at 288 & n. 8 (*quoting Bishop v. Wood*, 426 U.S. 341, 350, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976)).

§ 57. In the instant case, the chancellor found that "[n]o reasonable pattern can be found in the evaluations and recommendations made by Dr. Cook to Dr. Howse." As we have discussed, the findings and conclusions of the chancellor are insufficient in regard to whether the financial exigency was contrived, and whether the defendants designed the criteria for implementing the reduction in force for purposes of intentionally discriminating against Ramiah and Lakshmi. However, if either of these can be shown to be the case on remand, then the terminations ***544** of Ramiah and Lakshmi can fairly be said to be arbitrary and capricious, thus violating their substantive due process rights.

VII.

§ 58. In the original opinion, the Chancery Court of Jackson County, Mississippi, granted damages to Dr. Ramiah and Dr. Lakshmi in the amount of $94,124.50 and $83,095.11

respectively. In a subsequent opinion the chancellor increased the damage awards to $210,000 and $180,000 respectively. The State argues that the damage awards were improperly computed and should be reversed. The plaintiffs urge this Court to embrace the rule from *Wall v. Swilley*, 562 So.2d 1252 (Miss.1990):

> Whatever the measure of damages, they may be recovered only where and to the extent that the evidence removes their quantum from the realm of speculation and conjecture and transports it through the twilight zone and into the daylight of reasonable certainty.

Id. at 1256.

§ 59. In the original opinion the chancellor indicated that the amounts of the judgments were based on the plaintiff's former positions, the duty of the plaintiffs to mitigate damages, and the offer by GCRL to rehire the plaintiffs. In Supplemental Opinion Number Three, he stated that because a settlement was not achieved the relief granted in the Court's original Opinion was inadequate. No other reason is given for the award increase. Thus, the increase cannot be attributed to any evidence, and at the very least begs for clarification. Hence, conditional upon the outcome of the case on remand, the lower court is instructed to clarify the issue of damages.

§ 60. The State also argues that the appellees failed to mitigate damages. The opportunity for Appellees to mitigate damages was provided when GCRL invited them to assume their previous positions at the lab. The State contends that the offer of re-employment would not require Ramiah and Lakshmi to forfeit any right to seek additional relief from GCRL. The State relies on *Williams v. Albemarle City Board of Education*, 485 F.2d 232 (4th Cir.1973), which articulates the duty to mitigate damages

where the employment "... opportunity was immediately at hand, without forfeiture of any right to sue and recover for any unsatisfied deprivation." *Id.* at 233. The appellees argue that this re-employment required them to sign a contract which did not allow the same opportunities that they allege existed in their previous positions, therefore casting the re-employment opportunity outside the realm of "substantially equivalent employment." *O'Neal v. Gresham*, 519 F.2d 803 (4th Cir.1975).

§ 61. The trial court found that the offer of re-employment was not genuine. The fact remains, however, that a chance to earn the compensation that the appellees later argued as damages was available. The duty to mitigate has long been a part of Mississippi's jurisprudence and in this case Appellees failed to act consistently with that duty. *Birdsong v. Ellis*, 62 Miss. 418 (1884). Therefore, this issue as well should be clarified on remand. Finally, the issue of attorneys' fees is dependent on the success of Appellees' § 1983 claim against individual Defendants Howse and Cook. It should be noted that the award of attorneys' fees is a statutory remedy granted in 42 U.S.C. § 1988(b), and is applicable only to the § 1983 claim against individual Defendants Howse and Cook.

VIII.

§ 62. For the foregoing reasons, the decision of the chancery court is reversed and remanded for further proceedings consistent with this opinion.

§ 63. **REVERSED AND REMANDED.**

SULLIVAN, P.J., and WALLER, J., join this opinion.
McRAE, J., joins in result only and issues separate opinion.

PITTMAN, P.J., not participating.

McRAE, Justice, dissenting, delivers the following opinion:

§ 64. The majority notes that there is some evidence in the record to support a finding of ***545** intentional discrimination. If this is so, then our standard of review compels us to affirm the chancellor's findings. "[T]he chancellor below made his determination based on conflicting testimony. Under our standard of review in this situation, we are inclined to defer to the discretion of the chancellor." *Weathersby v. Weathersby*, 693 So.2d 1348, 1353 (Miss.1997). "If a chancellor's findings are supported by substantial, credible evidence, this Court will not reverse." *Merchants & Planters Bank of Raymond v. Williamson*, 691 So.2d 398, 402 (Miss.1997); *Branton v. Branton*, 559 So.2d 1038, 1042 (Miss.1990). However, even when there is some evidence, substantial evidence, or conclusive evidence in the record on appeal--as opposed to no evidence or insufficient evidence--supporting a finding, this Court should defer to the conclusions of the fact finder. Here the chancellor found some evidence to support final judgment in favor of Amaraneni, as administrator of the estate of Venkataramiah, and Lakshmi.

§ 65. Final judgment in this case was entered on January 19, 1991. More than seven years later, we are telling the litigants that they must go back to trial. Is this what we call justice? This Court should affirm the chancellor below.

§ 66. Uniform Chancery Court Rule 4.01 and Mississippi Rule of Civil Procedure 52 authorize the court to make specific findings of fact and state separately its conclusions of law thereon. While Miss. R. Civ. P. 52 gives the court discretion to make such findings absent a party's request, it

further provides, as does Uniform Chancery Court Rule 4.01, that a chancellor "shall" make such findings when required or requested by a party to the suit. In this case Amaraneni made a specific request for additional findings of fact and conclusions of law revealing the basis of GCRL's liability. The chancellor complied with the requirements of both rules by providing several supplemental opinions to the parties. As a result, this Court is not faced with the same problems as the Court in *Tricon Metals & Services, Inc. v. Topp*, 516 So.2d 236, 239 (Miss.1987), which is cited by the majority. Here we have sufficient facts to apply the implied findings doctrine, allowing us to assume that the chancellor made determinations of fact sufficient to support his judgment. Since Rule 52 and 4.01 are not jurisdictional, this Court may decide this appeal without further findings.

§ 67. The chancellor got it right and I would affirm his decision. The State failed to meet its burden of showing otherwise. The record now before this Court is replete with more than two thousand omissions by the court reporter, which was not the fault of the appellees. The court reporter further stated that the record would have been 5,000 pages but she only transcribed 1,988 pages, leaving more than 3,000 pages not transcribed. The testimony of several key witnesses for the plaintiff, including one who has since had a stroke and is now unable to testify, was not transcribed where the tapes were inaudible. A court reporter assisting in the transcription process stated in her affidavit that some of the recordings were so bad that they had to "rough in" what had been said. Even the chancellor's notes were used as testimony in the case; the majority, nevertheless, finds that his findings were "not corroborated by the record."

§ 68. Every effort was made to have the record in this case corrected; it was not. Sixteen exhibits remain missing. Numerous motions to compel and for sanctions were filed to

no avail. The court reporter since has retired, leaving a record still laden with omissions.

§ 69. It is the appellant who is responsible for presenting to this Court a record of trial proceedings sufficient to support his assignments of error. *Winters v. State*, 473 So.2d 452, 457 (Miss.1985). The majority should not penalize the appellees in this case due to the appellants' errors and then turn around and reward the appellants for supplying a record with more than 3,000 pages and multiple exhibits missing. *See Williams v. State*, 178 Miss. 694, 172 So. 746 (1937)(denying writ of certiorari requesting enlargement of record on appeal where movant failed to properly include exhibits within record in court below). That said, we should rely not on the record, but on the chancellor's findings. However, in view of the fact that there are two separate opinions written, one to ***546** reverse and the other to reverse and remand for a new trial, I join Justice Banks' opinion to remand so that the appellees will have an opportunity to retry the case. I still maintain, however, that the chancellor's findings should be affirmed.

MILLS, Justice, dissenting, delivers the following opinion:

§ 70. Our inquiry now focuses upon whether the record contains evidence sufficient to allow a reasonable trier of fact to conclude as the chancellor did in the trial court. *Molnar v. Ebasco Constructors, Inc.*, 986 F.2d 115, 118 (5th Cir.1993). "In a disparate treatment case involving an individual, the plaintiff initially has the burden of showing a prima facie case of discrimination." *Carroll v. Sears, Roebuck & Co.*, 708 F.2d 183, 195 (5th Cir.1983). A plaintiff meets this initial burden by demonstrating:

(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was

seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applica[tions] from persons [who possessed the plaintiff's] qualifications.

Anderson v. Douglas & Lomason Co., 26 F.3d 1277, 1297 (5th Cir.1994) (*quoting McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)). If the plaintiff is successful in this showing, the employer must show a legitimate, nondiscriminatory reason for the plaintiff's termination of employment. If the employer "carries this burden of production, the presumption raised by the prima facie case is rebutted" and drops from the case. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 255, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). " 'The plaintiff then has 'the full and fair opportunity to demonstrate,' through presentation of his own case and through cross-examination of the defendants' witnesses, 'that the proffered reason was not the true reason for the employment decision,' and that race was.' " *Anderson*, 26 F.3d at 1297 (*quoting St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993)). *"The plaintiff at all times bears the burden of persuading the court that he or she was the victim of intentional discrimination." Id.* [emphasis added].

§ 71. As to the plaintiffs' prima facie case, the appellees are Asian- Indians. Both have Ph.Ds and have conducted research that has been published in scholarly journals. Their qualifications have never been in question. The plaintiffs' claim falls apart, however, when considering the final prong of the *McDonnell Douglas* test. An extensive review of the record reveals no evidence that the plaintiffs' former positions were filled by anyone. To the contrary, the entire Physiology Section of GCRL has been closed.

The appellees contend that they were replaced by Harriet Perry. Ms. Perry occupies the physical space where the appellees formerly worked, but she was assigned to the Fish Research and Development Section. There are indications that others were hired after the appellees were fired, but whether these people were hired to replace appellees is at best, uncertain.

§ 72. The massive record in this case fails to indicate that the plaintiffs' employment was terminated because of their ethnic origin or race. Furthermore, the plaintiffs made no attempt to show disparity in the qualified population of the labor force, as called for in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 109 S.Ct. 2115, 104 L.Ed.2d 733 (1989). The only evidence supporting the plaintiffs' allegations is their unsupported belief that they were replaced by three workers assigned to research sections different from the plaintiffs' now defunct section. Anecdotal evidence and mere speculation does not support a finding that an employer followed an unwritten "policy" of discrimination. *Carroll*, 708 F.2d at 195-96.

§ 73. The true crux of this claim is that the legislature appropriated less funding than normally available for GCRL. That forced the lab to look at alternate means of meeting its budget. The GCRL administration decided that the best way of handling the foreseen budget problem was to eliminate the entire Physiology Section of GCRL. Under this plan thirty-four people were terminated. Eight ***547** were minorities, and twenty-six were non- minorities. Budgeting and preparing for reductions in the workforce are intricate policy matters entrusted solely to the management of GCRL and IHL.

... [T]he courts have uniformly held that terminated faculty have no right to participate in formulating those criteria [whom to dismiss], and no right to a hearing prior to the

decision to terminate. '[W]here lack of funds necessitate [s] releasing a sizeable number of the faculty, certainly it [is] peculiarly within the province of the school administration to determine which teachers should be released....'

Texas Faculty Ass'n v. University of Texas at Dallas, 946 F.2d 379, 385 (5th Cir.1991) (*quoting Levitt v. Board of Trustees*, 376 F.Supp. 945, 950 (D.Neb.1974)).The defendants are public officials serving the public trust. As such, they are mandated by state law to stay within the budgets provided for them. We should review their means of achieving this end with great deference. While public officials may not hide under a cloak of deference to conceal their discriminatory acts, it is always the plaintiff's burden to prove his case. The plaintiffs failed to do so in the case *sub judice*.

§ 74. Accordingly, I would reverse the ruling of the Chancellor and find in favor of the defendants.

PRATHER, C.J., and JAMES L. ROBERTS, Jr. and SMITH, JJ., join this opinion.

END OF DOCUMENT

APPENDIX D

In the Chancery Court of Jackson County, Mississippi

A. VENKATARAMIAH and G.J. LAKSHMI,
Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants,

Cause No. 50,839

Opinion of the Court
Decided: July 3, 1990

Kenneth B. Robertson, Chancellor

This cause came on to be heard and the Court having considered the pleadings, testimony, evidence and argument of counsel renders this its Opinion.

The Court has jurisdiction over the parties and the subject matter of this cause.

It would be far better for all concerned to have civil rights cases involving state agencies to be tried in state courts. However, this case demonstrates how poorly equipped our courts are to handle lengthy, complicated litigation. The only assistance available is from the attorneys of record, who must maintain an advisary posture. This cause required some 26 days of testimony by 32 witnesses and the consideration of 211 exhibits.

The Plaintiffs' attorney felt it necessary to attack the judgments of the Board of Trustees of Institutions of Higher

Learning (IHL), the staff of the Gulf Coast Research Laboratory (GCRL) and the two individual Defendants (Howse and Cook) to show continuing conspiracy or policy of discrimination against the two Plaintiffs. A large part of this evidence concerning such things as the building of a Director's Home, the purchase and leasing of real property, and the acquisition of scientific equipment are administrative policy matters entrusted to the supervision of IHL and are not matters to be here reviewed, except as related to this cause of action. Admittedly, personality conflicts will surface throughout this record.

GCRL has an interesting history of development based upon innovative ideas and dedicated persons who have been willing to sacrifice and work hard to achieve national and international recognition. The record will verify that the Plaintiffs are two such people and should be commended for their achievements and contributions.

The Plaintiffs, being natives of India are Asian Indians and are therefore members of a minority group as designated by the federal statute.

In 1986, IHL advised all institutions regulated and controlled by it that the Legislature was not going to provide the money necessary for their projected budgets and that each institution would have to make necessary adjustments for the anticipated short fall of funds. It further advised that one method available would be for the institution to request and IHL to determine the existence of a financial exigency. GCRL elected this procedure. Apparently the State of Oklahoma had suffered similar funding problems and IHL had an attorney who had handled that state's crisis meet with IHL and the institution heads to advise how to declaration of a financial exigency could work within the framework of federal law. Unfortunately, the State of Mississippi does not

have the same latitude of discretion as does some 37 other states. This fact seems to have been overlooked or ignored by the Oklahoma expert and the attorneys for IHL. As a result, a plan was formulated and a series of events went into play which resulted in this litigation.

By IHL Order, the Affirmative Action Plan was suspended. At GCRL each department and individual was evaluated to determine where necessary cuts could be made. The end result of which was that the physiology section was closed and the Plaintiffs were dismissed.

Even though the evaluation plan had the façade of fairness, including a right of appeal, the end results were that some 34 employees were terminated. The number of minorities affected is beyond coincidence and the evidence presented shows a pattern of discrimination, whether intentional or not, because Affirmative Action was ignored. Due to the declaration of a financial exigency, the members of the appeal panel had to have a vested interest in the outcome of the termination procedure, lest their departments or employment might be adversely affected.

GCRL argues that at no time did it operate with bad faith or improper motives. Good faith mistakes of facts or law and good faith and absence of improper motives are proper defenses unless the end result of the action taken by those with a duty to protect the rights of minorities work to the denial of rights and discrimination. Such is the case as here presented.

The entire blame cannot be placed upon GCRL. Men well educated in science and research were called upon to perform administrative duties with little help from the parenting body, IHL. The story of how tenure for the staff has been handled at GCRL fully demonstrates the plight of

that institution and the senior scientists working and teaching there. In dealing with GCRL, the IHL ignored its own by-laws in favor of customary practice. It appears that during the period of financial exigency, the IHL and GCRL decided to abandon the by-laws of IHL and operate under the state's doctrine of employment and termination "at will." GCRL's purported offer of reemployment would have to be classified an attempt to mix doctrine and customary practice. It is amazing that any permanent staff could have been held together at GCRL.

The Plaintiffs want to be reinstated at GCRL with back pay and restoration of their retirement benefits which they had to withdraw in order to live. To grant such relief would put the Court in a position of running or managing GCRL in the place and stead of IHL (and now the University of Southern Mississippi). The Court is less equipped to undertake management than it is to hear cases such as this one.

Too many hours were wasted by the Court trying to correlate the testimony of individual witnesses with the exhibits. Should there be an appeal, the record is adequate to support the Court's findings and conclusions of law.

From the evidence presented and the law controlling, the Court must and does find that the Plaintiffs were wrongfully terminated in violation of their civil rights and should be awarded Judgment against GCRL. Therefore, the Court finds that the Plaintiff A. Venkataramiah should be granted Judgment in the amount of $94,124.50 and that the Plaintiff G. J. Lakshmi should be granted Judgment in the amount of $83,095.11.

In determining the amount of the Judgments here granted, the Court took into consideration the former

position of each Plaintiff, the duty of each Plaintiff to mitigate his or her damages and the "offer" of GCRL to rehire the Plaintiffs, even though same violated the by-laws of IHL. Unless Judgment against the two individual Defendants (Howse and Cook) is a legal necessity for the Plaintiffs to be granted Judgments, said Defendants should be dismissed. These Defendants' actions were on behalf of and for GCRL under the guidance and advice of IHL. The Defendant GCRL should pay all cost in these proceedings.

The Plaintiffs' attorney of record should submit proof of his fees and cost, along with any supporting case law or authority, for the Court to determine what amount, if any, should be here awarded.

The attorneys shall prepare a Judgment consistent with this Opinion.

Dated July 3, 1990

APPENDIX D[1]

In the Chancery Court of Jackson County, Mississippi

A. VENKATARAMIAH and G.J. LAKSHMI,
Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants,

Cause No. 50,839

Supplemental Opinion Number 1
Decided: October 11, 1990

Kenneth B. Robertson, Chancellor

This cause came on to be heard and the Court having considered the pleadings, testimony, evidence and argument of counsel renders this its Supplemental Opinion Number 1.

The Court has jurisdiction over the parties and the subject matter of this cause.

I am not here dealing with political appointees who are unskilled, untrained and given no expert support to accomplish their goals. Hopefully, I am dealing with some of the best academic and scientific minds serving the State of Mississippi and they have the support and staff of a constitutional body composed of knowledgeable, qualified and reputable citizens. The record will show that the Defendants had available competent legal assistance. I sincerely believed that all parties concerned would work together to correct the problems which had developed and get on with their business. I expected that the Plaintiffs would have resumed their work with GCRL and that petty,

childish bickering would cease. If there still remains a rule of common prudence certainly this is a case where it should have been applied.

By the Court's Opinion, I tried to leave open the door of settlement. Now I am asked to seal that door by revising the Opinion in a legal brief or Supreme Court opinion format so that the Judgment of the Court can be attached in proper moot court fashion. I long ago quit looking for the "case on all fours," because there is no such thing.

To accommodate the Defendant's request and to comply with the "Rules,", four Supplemental Opinions shall issue as follows:

On this date Supplemental Opinion Number 1 designating the facts relied upon; On Monday, October 15, 1990, Supplemental Opinion Number 2, designating the law relied upon; Wednesday, October 17, 1990, Supplemental Opinion Number 3, addressing the remedies available to the Plaintiffs and finally, on Friday, October 19, 1990, Supplemental Opinion Number 4, addressing attorney fees requested by Plaintiff's attorney.

If this case has not been resolved before the entry of the Court's Supplemental Opinion Number 4, then a Judgment will be entered and any party aggrieved may appeal.

Facts Relied Upon By The Court.

Dr. Gordon Gunter is an eminently qualified and internationally recognized scientist. (See Exhibit No. 48).

Dr. Gunter was instrumental in the early development of GCRL. (See testimony of Dr. Gunter, Dr. Howse and Dr. Cook).

Dr. Gunter actively solicited the employment of Dr. Venkataramiah and Dr. Lakshmi for employment at GCRL and maintained permanent employees consistence with the policy of his administration as Director of GCRL and had only two employees released, one by firing and one by permissable resignation. (See the uncontradicted testimony of Dr. Gunter.)

Dr. Venkataramiah and Dr. Lakshmi are natives of India and as Asian Indians are members of a minority group under federal statute.

Dr. Venkataramiah and Dr. Lakshmi brought national and international recognition to GCRL. (See Exhibit Nos. 112 and 147.)

Even though no biodata was introduced regarding Dr. Howse, the testimony shows him to be a senior scientist and found by IHL qualified to serve as Director of GCRL.

Dr. Cook was qualified to serve as Assistant Director. (See Exhibit No. 178.)

IHL notified GCRL of a potential shortfall of State funds (hard money). (See Exhibit No. 110.)

IHL suggested the use of a declaration of financial exegency [sic] as a solution to financial problems. (See Exhibit No. 129.)

GCRL requested a declaration of financial exegency [sic]. (See Exhibit Nos. 36 and 52.)

GCRL obtained the declaration of financial exegency [sic] from IHL along with authority for Reduction in Workforce and Suspension of Affirmative Action Plan. (See Exhibit No. 51.)

Dr. Cook made evaluation of Dr. Venkataramiah and the Physiology Department and of Dr. Lakshmi. (See Exhibit No. 111.)

No reasonable pattern can be found in the evaluations and recommendations made by Dr. Cook to Dr. Howse. (See the evaluation sheets introduced and the testimony of Dr. Cook and Dr. Howse.

Upon Dr. Cook's recommendation, Dr. Howse declared the work of the Physiology Department peripheral to GCRL objectives. (See Exhibit Nos. 58 and 59.)

The Plaintiffs' effort to follow appeal procedures were futile and the entire system was found objectionable to the appeal panel. (See Exhibit No. 71.)

GCRL made a perported [sic] offer to rehire the Plaintiffs. (See Exhibit Nos. 8 and 9.)

The suspension of GCRL Affirmative Action Plan was without federal consent. (See testimony of Dr. Howse and Dr. Cook.)

The perported [sic] offers to rehire were without authority of law of the By-Laws of IHL. (See Testimony of Dr. Cleere and Exhibit Nos. 3 and 130.)

Whatever financial exegency [sic] that may have existed lasted less than 30 days. (See testimony of Mr.

Fulton and Exhibit No. ___, being state audit of period in question.)

GCRL dismissed 34 employees, leaving only one minority employee at GCRL. (See testimony of Dr. Cook and Dr. Howse.)

Additional facts may be referenced as needed in the Supplemental Opinion to follow.

Dated October 11, 1990.

APPENDIX D[2]

In the Chancery Court of Jackson County, Mississippi

A. VENKATARAMIAH and G.J. LAKSHMI,
Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants,

Cause No. 50,839

Corrected Supplemental Opinion Number 1
Decided: October 15, 1990

Kenneth B. Robertson, Chancellor

This cause came on to be heard and the Court having considered the pleadings, testimony, evidence and argument of counsel renders this its Corrected Supplemental Opinion Number 1.

The Court has jurisdiction over the parties and the subject matter of this cause.

I am not here dealing with political appointees who are unskilled, untrained and given no expert support to accomplish their goals. Hopefully, I am dealing with some of the best academic and scientific minds serving the State of Mississippi and they have the support and staff of a constitutional body composed of knowledgeable, qualified and reputable citizens. The record will show that the Defendants had available competent legal assistance. I sincerely believe that all parties concerned would work together to correct the problems which had developed and get on with their business. I expected that the Plaintiffs would have resumed their work with GCRL and that petty, childish bickering would cease. If there still remains a rule of

common purdence [sic] certainly this is a case where it should have been applied.

By the Court's Opinion, I tried to leave open the door of settlement. Now I am asked to seal that door by revising the Opinion in a legal brief or Supreme Court opinion format so that the Judgment of the Court can be attached in proper moot court fashion. I long ago quit looking for the "case on all fours," because there is no such thing.

To accommodate the Defendant's request and to comply with the "Rules," four Supplemental Opinion [sic] shall issue as follows:

On this date Supplemental Opinion Number 1 designating the facts relied upon; On Monday, October 15, 1990, Supplemental Opinion Number 2, designating the law relied upon; Wednesday, October 17, 1990, Supplemental Opinion Number 3, addressing the remedies available to the Plaintiffs and finally, on Friday, October 19, 1990, Supplemental Opinion Number 4, addressing attorney fees requested by the Plaintiffs' attorney.

If this case has not been resolved before the entry of the Court's Supplemental Opinion Number 4, then a Judgment will be entered and any party aggrieved may appeal.

FACTS RELIED UPON BY THE COURT

Dr. Gordon Gunter is an eminently qualified and internationally recognized scientist. (See Exhibit No. 48).

Dr. Gunter was instrumental in the early development of GCRL. (See testimony of Dr. Gunter, Dr. Howse and Dr. Cook).

Dr. Gunter actively solicited the employment of Dr. Venkataramiah and Dr. Lakshmi for employment at GCRL and maintained permanent employees consistent with the policy of his administration as Director of GCRL and had only two employees released, one by firing and one by

permissible resignation. (See the uncontradicted testimony of Dr. Gunter.)

Dr. Venkataramiah and Dr. Lakshmi are natives of India and as Asian Indians are members of a minority group under federal statute.

Dr. Venkataramiah and Dr. Lakshmi brought national and international recognition to GCRL. (See Exhibit Nos. 112 and 147.)

Even though no biodata was introduced regarding Dr. Howse, the testimony shows him to be a senior scientist and found by IHL qualified to serve as Director of GCRL.

Dr. Cook was qualified to serve as Assistant Director. (See Exhibit No. 178.)

IHL notified GCRL of a potential shortfall of State funds (hard money). (See Exhibit No. 110.)

GCRL suggested the use of a declaration of financial exigency and a reduction in work force as a solution to financial problems. (See Exhibit No. 129.)

IHL granted a declaration of financial exigency and approved the reduction in work force plan as submitted by Dr. Howse. (See Exhibit Nos. 36 and 52.)

GCRL obtained the declaration of financial exigency from IHL along with authority for Reduction in Workforce and Suspension of Affirmative Action Plan. (See Exhibit Nos. 51 and 52.)

Dr. Cook made evaluation of Dr. Venkataramiah and the Physiology Department and of Dr. Lakshmi. (See Exhibit No. 111.)

No reasonable pattern can be found in the evaluations and recommendations made by Dr. Cook to Dr. Howse. (See the evaluation sheets introduced and the testimony of Dr. Cook and Dr. Howse. [sic]

Upon Dr. Cook's recommendation, Dr. Howse declared the work of the Physiology Department peripheral to GCRL objectives. (See Exhibit Nos. 58 and 59.)

The Plaintiffs' effort to follow appeal procedures were futile and the entire system was found objectionable to the appeal panel. (See Exhibit No. 71.)

GCRL made a purported offer to rehire the Plaintiffs. (See Exhibit Nos. 8 and 9.)

The suspension of GCRL Affirmative Action Plan was without federal consent. (See testimony of Dr. Howse and Dr. Cook.)

The purported offers to rehire were without authority of law or the By-Laws of IHL. (See testimony of Dr. Cleere and Exhibit Nos. 3 and 130.)

Whatever financial exigency that may have existed lasted less than 30 days. (See testimony of Mr. Fulton and Exhibit No. , being state audit of period in question.)

GCRL dismissed 34 employees, leaving only one minority employee at GCRL. (See testimony of Dr. Cook and Dr. Howse.)

Additional facts may be referenced as needed in the Supplemental Opinion to follow.

RENDERED this the 11th day of October, A.D., 1990.

KENNETH B. ROBERTSON, CHANCELLOR

NOTE: Supplemental Opinion Number 2 will be one day late. [sic]

KENNETH B. ROBERTSON, CHANCELLOR

APPENDIX D[3]

In the Chancery Court of Jackson County, Mississippi

A. VENKATARAMIAH and G.J. LAKSHMI,
Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants,

Cause No. 50,839

Supplemental Opinion Number 2
Decided: October 16, 1990

Kenneth B. Robertson, Chancellor
Supplemental Opinion Number 2.

The Court had the benefit of excellent briefs presented by the attorneys of record. As requested, the Court considered the following matters of law:

42 U.S.C. §1983
42 U.S.C. §1985
Eleventh Amendment to U.S. Constitution
Pennhurst State School and Hospital v. Halderman, 104 S. Ct. 900, 79 L. Ed. 2d 67;
Quern v. Jordon, 99 S. Ct. 1139, 59 L. Ed. 2d 358;
Edelman v. Jordan, 94 S. Ct. 1347, 39 L. Ed. 2d 662;
Clay v. Texas Women's University, 728 F. 2d 714;
Ford Motor Company v. Department of Treasury, 323 U.S. 459;
Kentucky v. Graham, 105 S. Ct. 3099, 87 L. Ed. 2d 1114;
Cory v. White, 102 S. Ct. 23;
Kremp v. Dobbs, 775 F. 2d 1319;
Alabama v. Pugh, 98 S. Ct. 3057, 57 L. Ed. 2d 1114;

Title VI, 42 U.S.C.A. 2000-d, *et seq.*,
Executive Order 11246;
By-Laws of IHL
GCRL Affirmative Action Plan
Perry v. Sinderman, 408 U.S. 593, 33 L. Ed. 2d 570, 92 S. Ct. 2694;
Wicks v. Mississippi Valley State University;
Harlow v. Fitzgerald, 102 S. Ct. 2727, 73 L. Ed. 2d 396;
Wells v. Dallas Independent School District, 793 F. 2d 679;
Lovitt v. University of Texas, 759 F. 2d 1224;
Martin v. Malhoyt, 830 F. 2d 237;
Anderson v. Creighton, 483 U.S. 635, 97 L. Ed. 2d 523, 107 S. Ct. 3034;
Wood v. Strickland, 470 U.S. 308, 43 L. Ed. 2d 214;
Fourteenth Amendment to U.S. Constitution;
Lee v. Conecuh County Bd. of Ed., 634 F. 2d 959;
City of Richmond v. J. A. Croson Co., 102 L. Ed. 2d 854, 109 S. Ct. 706;
Wards Cove Packing Co., Inc. v. Antonio, 104 L. Ed. 2d 733, 109 S. Ct. 2115;
Skidmore v. Shamrock Independent School District, 464 F. 2d 605;

Federal Civil Rights Act by Chester J. Antieau. See Chapter Seven and Eight on Conspiracies, Chapter Eleven on Federally Funded Programs, Chapter Twelve on Employment and Fifteen on Discrimination. I have misplaced my research worksheet whereon I noted journal articles and publications regarding the history of *Title 42* and its general application.

Considering the cases cited above and giving due notice to relevance given each by the attorneys of record along with the Court's independent research, I am satisfied

that the Plaintiffs were wrongfully terminated and are entitled to relief. Along with the prior facts considered, there is no escaping the facts that as Affirmative Action Officer, Dr. Cook demonstrated his lack of knowledge of his duties and his failure to carry out such duties, that Dr. Cook's evaluation procedures were designed to protect certain employees and to terminate others, the Plaintiffs being two of the later category, that the appeal procedure was obviously arbitrary and capricious and tainted with conflicts of interest and so orchestrated as to confirm actions predetermined and carried out. Once you follow the step by step calculated procedure used by Dr. Cook with the approval of Dr. Howse, a planned termination of the Plaintiffs is painfully obvious and all done under color of law to deny the civil rights of the Plaintiffs.

Dated October 16, 1990.

APPENDIX D[4]

In the Chancery Court of Jackson County, Mississippi

A. VENKATARAMIAH and G.J. LAKSHMI,
Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants,

Cause No. 50,839

Supplemental Opinion Number 3
Decided: October 18, 1990

Kenneth B. Robertson, Chancellor
Supplemental Opinion Number 3.

The citation for the *Wicks* Case referenced in Supplemental Opinion of the Court Number 3 is 536 So. 2d 20. Add thereto the case of *McDonnell Douglas Corporation v. Percy Green*, 411 U.S. 792, 36 L. Ed. 2d 668, 93 S. Ct. 1817.

At the last hearing the Defendant's attorney made comment regarding the original Opinion of the Court that it appeared that the Court had left the doors open on both ends of the case. Insofar as it represented a continuing effort by the Court to encourage settlement of this cause, he was absolutely correct. Unfortunately, he did not have the benefit of trying the case on merit and observing the parties so that he could better understand the many problems presented.

It has been said that salt water breeds tolerance and that is true because the coastal area is made up of persons of varying racial and national origins, heritages, cultures,

religions and ethnic backgrounds and traits. The Plaintiffs told of how they were accepted into the community. The racial slurs which they recounted were relatively few and isolated.

It was refreshing to observe that some 20 years in Mississippi had not destroyed the character of the Plaintiffs which was fostered by their culture and heritage. There was ever evident their sense of pride, their sense of self-respect and respect for others, their dedication to hard work and to achieve excellence as fulfilling an obligation and their determination to seek justice. Throughout the trial they maintained that their primary objective in this case was to be restored to their work and positions rather than monetary awards. And therefore, the doors were left open.

Dr. Venkatarmiah is now 62 years and suffering with a severe heart condition. It would not have taken very much money to restore him to his position and bring current his retirement funds. With his dignity and pride restored, he could have in a very short time retired on medical disability.

Dr. Lakshmi is eminently qualified in her field by education and experience. It is near impossible to believe that she could not have been restored and transferred to a meaningful position within the parent university system. The way in which these people (as well as some 34 others) have been treated has obviously created a terrible division at GCRL with a disruptive effect.

Without demonstrating some understanding and compassion the division will grow, suspicion will set in, (obviously another "financial exigency" lurks at the doors of all state agencies (and work produce will surely deteriorate. I still believe that a resolution along the lines here suggested

is possible and would better serve the interest of all concerned.

I have already ruled that the Court is not equipped to manage employment at GCRL and that opinion remains. The Plaintiffs should not be restored by force of law, but rather by right.

Settlement having not been achieved, the Court must agree with the Plaintiffs that the relief to be granted by the Court's original Opinion is adequate. The Court now finds that for all damages suffered, the Plaintiff Dr. Venkataramiah should be granted Judgment in the amount of $210,000.00 and the Plaintiff Dr. Lakshmi should be granted Judgment in the amount of $180,000.00.

Dated October 18, 1990.

APPENDIX D[5]

In the Chancery Court of Jackson County, Mississippi

A. VENKATARAMIAH and G.J. LAKSHMI,
Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants,

Cause No. 50,839

Supplemental Opinion Number 4
Decided: October 19, 1990

Kenneth B. Robertson, Chancellor
Supplemental Opinion of the Court Number 4.

The fourth and final Supplemental Opinion will address the issue of attorney fees.

It cannot be disputed that cases such as the one here presented are costly. The Plaintiffs' attorney has requested the award of a fee in the amount of $94,102.50 based upon his normally hourly rate.

In addition thereto he requests cost in the amount of $23,507.00 which includes the cost of copying over 8,000 documents at GCRL and some $15,000.00 which the Plaintiffs paid or owe a prior attorney. The Court must find that an inordinate amount of the cost was provoked by GCRL's attitude toward producing necessary documents.

As pointed out in earlier Opinions, a great deal of trial time was lost due to personality involvment [sic] and overkill

in "making a record." The Court is not bound by the fees and cost requested.

The Court finds that the Plaintiffs should recover Judgment for attorney fees in the amount of $62,500.00, plus cost in the amount of $8,500.00 for a total of $71,000.00.

If this cause has not been otherwise resolved on or before November 15, 1990, the Court shall enter Judgment consistent with the Opinions herein rendered.

Dated October 19, 1990.

APPENDIX D[6]

In the Chancery Court of Jackson County, Mississippi

A. VENKATARAMIAH and G.J. LAKSHMI,
Plaintiffs,

v.

GULF COAST RESEARCH LABORATORY, Harold D. HOWSE and David COOK,
Defendants,

Cause No. 50,839

Judgment
Decided: January 16, 1991

Kenneth B. Robertson, Chancellor
Judgment.

The Court having made its Findings of Fact and Conclusions of Law by its Opinion of the Court rendered July 3, 1990, its Supplemental Opinion Number 1 rendered October 11, 1990, its Corrected Supplemental Opinion rendered October 15, 1990, its Supplemental Opinion Number 2 rendered October 16, 1990, its Supplemental Opinion Number 3 rendered October 18, 1990, and its Supplemental Opinion Number 4 rendered October 19, 1990, it is, therefore

ORDERED, ADJUDGED and DECREED:

That the Plaintiff, A. Venkataramiah should be and is hereby granted Judgment against the named Defendants, Gulf Coast Research Laboratory and Harold D. Howse and David Cook, Individually and in their official capacity herein in the amount of $210,000.00.

That the Plaintiff G. J. Lakshmi should be and is hereby granted Judgment agains [sic] the named Defendants, Gulf Coast Research Laboratory and Harold D. Howse and David Cook, individually and in their official capacity herein in the amount of $180,000.00.

That the Plaintiffs named herein should be and are granted Judgment against the named Defendants herein, Gulf Coast Research Laboratory and Harold D. Howse and David Cook, individually and in their official capacity in the amount of $71,000.00 as compensation for attorney fees and cost of litigation.

The named Defendants herein should be and are hereby assessed with all costs of Court for these proceedings.

ORDERED, ADJUDGED and DECREED this the 16th day of January, A. D., 1991.

APPENDIX E

MANDATE
SUPREME COURT OF MISSISSIPPI

To the Jackson County Chancery Court – GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a judgment as follows:

Supreme Court Case # 2002-CA-00970-SCT
Trial Court Case #50,839

Gulf Coast Research Laboratory, Harold D. Howse and David Cook v. Kumar Amaraneni, Administrator of the Estate of Amaraneni Venkataramiah and G.J. Lakshmi

Thursday, 13th day of May, 2004
Vacated and Remanded. Appellees taxed with costs of appeal.

Thursday, 5th day of August, 2004
Motion for Rehearing filed by appellees is denied. Easley,J., would grant. Diaz and Randolph, JJ., not participating.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, Betty W. Sephton, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be

filed and is actually on file in my office under my custody and control

Witness my signature and the Court's seal on August 12, 2004, A.D.

Signed [Betty W. Sephton]